Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-01(NCVC)(A)-40–01 OF 2022 AND B-01(NCVC)(A)-57–01 OF 2022

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Islamic Law — Jurisdiction — High Court or Syariah Court — Applicant before Syariah High Court sought declaration that she was 'no longer a Muslim' although, in essence, her pleadings and arguments before the court were that she had never professed the religion of Islam — Syariah High Court and Syariah Court of Appeal held applicant was still a Muslim — Whether Syariah Courts' decision was jurisdictionally valid to disentitle applicant on grounds of res judicata and lack of locus standi to subsequently apply to Civil High Court for declaration that she was 'never a Muslim' from the outset — Whether High Court had jurisdiction to grant the declaration — Whether given Syariah Courts' earlier finding that applicant was a Muslim, her later application to the civil court ought to be construed as an application to renounce Islam, which only Syariah Court had jurisdiction to determine

The respondent ('Dahlia') was born to a legally-married Hindu father and Chinese-Buddhist mother who separated in 1991 when Dahlia was less than five years old. During the separation, Dahlia lived with her mother. On 17 May 1991, Dahlia's mother took Dahlia along when she went to the Jabatan Agama Islam Selangor ('JAIS') to convert to the Islamic faith. Following the conversion, Dahlia's mother, after divorcing her husband, married a Malay man and thereafter Dahlia lived with her mother and stepfather until she was aged 17 when she left home to pursue her studies. JAIS issued conversion cards to both Dahlia and her mother stating that they had converted to the Islamic faith on 17 May 1991. Dahlia's father had not consented to Dahlia's conversion. In 2013, when she was 27 years old, Dahlia filed a summons at the Kuala Lumpur Syariah High Court for a declaration that she was 'no longer a Muslim' although in her pleadings and in her arguments before the court she maintained that she had never professed the Islamic faith from the beginning and that her 'conversion' when she was a minor was invalid. The Syariah High Court found that Dahlia was still a Muslim and dismissed the summons. The Syariah Court of Appeal upheld the decision. Dahlia then filed an originating summons ('OS') before the Civil High Court against the Majlis Agama Islam Selangor (MAIS) and the Selangor State Government for a declaration that she was not 'a person professing the religion of Islam'. The respondents in the OS argued that the High Court had no jurisdiction to determine the matter

because the Syariah Court had already ruled that Dahlia was a Muslim, thus rendering the question of her religious status res judicata and not open to re-litigation. They also argued that because Dahlia failed to get relief before the Syariah Court, it was an afterthought on her part to file the OS for a declaration that she was not a Muslim so as to bring her case within the jurisdiction of the Civil High Court. In *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181 ('Rosliza'), the Federal Court held that only the Syariah Court had the jurisdiction to determine an application for a declaration that a person was no longer a Muslim, ie, an apostasy or renunciation case, but if it was for a declaration that a person was not, or never was, a Muslim (ie, an *ab initio* case), then the right to determine that question belonged to the civil court. The High Court judge decided that Dahlia's case was an *ab initio* one and therefore he had the jurisdiction to hear the OS and grant the declaration Dahlia sought. The judge held that: (a) Dahlia had proven her assertion in the OS that she had never professed the religion of Islam; (b) *Rosliza* effectively nullified the Syariah Court's decision because the Syariah Court had no jurisdiction to determine Dahlia's assertions that she did not profess the religion of Islam *ab initio*; (c) accordingly, the Syariah Court's decision was neither res judicata in respect of Dahlia's religious status nor deprived her of locus standi to seek a remedy from the Civil High Court; (d) the admissions Dahlia might have made in the Syariah Court proceedings that she had observed certain Islamic practices whilst growing up with her Muslim-convert mother and Malay stepfather were mere 'experiences and exposures to the religion of Islam' and could not equate to Dahlia having 'practised and professed' the religion of Islam; (e) Dahlia's conversion when she was only four years and five months old was invalid for contravening s 147 of the Administration of Muslim Enactment 1952 ('the 1952 Enactment') which was the law then prevailing; (f) neither s 70 nor s 74(3) of the Administration of Islamic Law Enactment 1989 ('the 1989 Enactment') could be used to assert that Dahlia was a Muslim because the 1989 Enactment only came into force on 1 September 1991, after the date of Dahlia's alleged conversion; and (g) Dahlia could not be faulted for seeking relief in the Syariah Court first because the law at that time as to the jurisdictions between the Syariah and Civil Courts was unclear and was only made clear by the Federal Court's decision in *Rosliza*. The instant appeals were against the High Court's decision.

Held, by majority, allowing the appeals and setting aside the High Court's decision:

(1) **(per Ravinthran JCA, dissenting)** The OS and the affidavits filed in support of it did not show any element of apostasy or renunciation of the religion of Islam by Dahlia. On the undisputed facts of the case, the High Court correctly assumed jurisdiction to consider the matter on the merits as to whether to grant declaratory relief in respect of her religious status (see para 26).

(2) **(per Ravinthran JCA, dissenting)** Since the High Court found that Dahlia was not a person professing the religion of Islam and that her conversion was unlawful, the subject-matter of the OS plainly fell within the jurisdiction of the Civil High Court as it was an *ab initio* case. It followed that the decision of the Syariah Court was not binding on Dahlia. Neither consent nor estoppel nor waiver could confer jurisdiction upon a court that lacked jurisdiction and thus the doctrine of res judicata could not apply to any decision made by such a court (see para 43).

(3) **(per Ravinthran JCA, dissenting)** The fact that Dahlia had sought relief from the Syariah Court first did not *ipso facto* deprive the civil court of jurisdiction nor deprive Dahlia of the locus standi to file the OS. The High Court found that Dahlia sought relief from the Syariah Court 'out of necessity'. This was because prior to the Federal Court's decision in *Rosliza*, the law was unclear as to the demarcation of jurisdiction between apostasy cases and cases where the applicant asserted that he or she was never a Muslim to start with. In a host of cases before *Rosliza*, the courts did not make any distinction between apostasy cases and cases where it was pleaded that either the conversion was unlawful or that the applicant was never a Muslim *ab initio*. The civil courts declined to adjudicate on the basis that the matters were within the jurisdiction of the Syariah Court without scrutinising the subject matter. Therefore, given that existing judicial attitude and the predicament that Dahlia was in, it should not matter that Dahlia, for lack of any legal avenue, approached the Syariah Court first (see paras 41–43).

(4) **(per Ravinthran JCA, dissenting)** In the light of the clear violation of s 147 of the 1952 Enactment, Dahlia's purported conversion on 17 May 1991 was anything but lawful. The appellants never addressed the point about the violation of s 147. Hence, the decision of the High Court judge on this point could not be faulted. There was also no merit to the appellant's argument that pursuant to s 74(3) of the 1989 Enactment, the conversion card issued to Dahlia was conclusive proof that she was a Muslim. Logically, that could not be so if the conversion itself was patently unlawful on the date it was performed because of the breach of the then prevailing law, namely, s 147 of the 1952 Enactment (see paras 29–32).

(5) **(per Ravinthran JCA, dissenting)** The fact that Dhalia's father did not consent to her conversion was another reason for its invalidity. The Federal Court in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 held that the consent of both parents was required under art 12(4) of the Federal Constitution. Nothing in the 1952 Enactment authorised the conversion of a minor at the material time without the consent of the

non-converting parent. In addition, r 4(1) of the Administration of Islamic Law (Conversion of Minors) Rules 1991, which was made pursuant to the 1989 Enactment, required the written consent of the father of the minor for the conversion (see para 35).

(6) **(per Ravinthran JCA, dissenting)** The High Court judge accepted the affidavit evidence of Dahlia and her mother. The mother's evidence was not contradicted by anyone and her evidence constituted the best evidence in respect of matters pertaining to Dahlia's upbringing from the age of five until she left the family home to pursue her studies at the age of 17. As the High Court judge had given careful consideration to the unrebutted affidavit evidence of Dahlia and her mother, the finding of facts by the High Court judge did not warrant appellate interference (see paras 36–37).

(7) **(per Ravinthran JCA, dissenting)** Both in the Syariah Court as well as in the OS proceedings, Dahlia never resiled from her basic contention that she was not a person professing the religion of Islam. The admissions she made in the Syariah Court that during the time she lived with her mother and stepfather she followed some Islamic practices such as praying, fasting and attending religious ceremonies, related to incidents of a childhood spent with a Muslim stepfather and a Muslim convert mother as found by the High Court judge. It followed that Dahlia was exposed to Islamic practices at an early age. However, her narration of her childhood exposure to the religion of Islam could not detract from the first-hand affidavit evidence of her mother who said that Dahlia did not practise the religion of Islam and was permitted to continue in her original faith (see paras 38–39).

(8) **(per Mohd Nazlan JCA, majority)** The OS filed by Dahlia for a declaration that she was not a Muslim was a matter that fell within the Syariah, and not the Civil jurisdiction. On the factual matrix of the case, Dahlia had not proven on balance of probabilities that her case was one where she was never a person who professed the religion of Islam. This was not therefore an *ab initio* case, instead it ought to have been considered as a 'no longer a Muslim' or a renunciation case, falling therefore within the Syariah jurisdiction (see paras 164–165).

(9) **(per Mohd Nazlan JCA, majority)** As the Syariah Court had already determined that Dahlia was still a Muslim, the OS necessarily had to be construed as a renunciation case which rightly fell under the Syariah jurisdiction within the context of the distinction formulated in *Rosliza*. It was irrelevant whether the application filed at the Syariah Court was stated as one never was a Muslim or as one no longer was a Muslim precisely because the judicial determination had already been made by the Syariah Court that one 'is a Muslim or is still a Muslim'. A judicial determination by the Syariah Court that a person was still a Muslim, like

presently, must necessarily mean that he/she is a Muslim, and not one who was never a Muslim. This, therefore, already answered the question on the distinction posed in *Rosliza* (see paras 88 & 92).

(10) **(per Mohd Nazlan JCA, majority)** The determination by the Syariah Court of Dahlia's religious status meant that the OS was res judicata and potentially an abuse of the court's process and that Dahlia had no locus standi to re-litigate a similar application before the Civil High Court via the OS (see para 163).

(11) **(per Mohd Nazlan JCA, majority)** The civil courts had no jurisdictional authority to appeal, review or set aside and go behind the decisions of the Syariah Courts. These included re-litigating at the civil court issues already determined in the Syariah Court and departing from the earlier findings of the Syariah Court. Any re-opening at the civil courts of decisions made by the Syariah Courts on an individual's religious status was firmly not countenanced by art 121(1A) of the Federal Constitution. As such, the High Court's holding that the decisions of the Syariah High Court and Syariah Court of Appeal had been nullified by the authority of *Rosliza* because the Syariah Court had no jurisdiction to determine the question of Dahlia's assertion that she never professed the religion of Islam was erroneous and could not be sustained (see paras 89 & 166).

(12) **(per Mohd Nazlan JCA, majority)** On 28 August 1993, by which time the 1989 Enactment had come into force, JAIS issued a conversion card to Dahlia upon the registration of her conversion. This attracted the application of s 74(3) of the 1989 Enactment which provided that a certificate of conversion to Islam shall be conclusive proof of the facts stated therein. In other words, the conversion was valid. But even if the conversion was not valid, it did not mean Dahlia had never professed the religion of Islam. *Rosliza* established that a Muslim by identification would be legally identified as a 'person professing the religion of Islam' whether or not he/she practiced the religion or believed in the faith (see paras 106, 119–120 & 157).

(13) **(per Mohd Nazlan JCA, majority)** Dahlia's pleadings in the Syariah Court, where she never challenged the validity of her conversion but sought a declaration that she was 'no longer a Muslim', was a form of judicial admission which operated to prevent or estop her from subsequently adopting a different stance in the OS where her case became one that she was 'never a Muslim' to begin with (see paras 137–143).

(14) **(per Mohd Nazlan JCA, majority)** In their grounds of judgment, the Syariah High Court and Syariah Court of Appeal found that Dahlia was a Muslim based, inter alia, on the wide definition of who was a Muslim in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993. The Syariah Courts found no evidence that Dahlia's father had

challenged her conversion and that during the 23 years prior to her application to the Syariah High Court to renounce Islam, Dahlia had identified herself as a Muslim in a multitude of ways and had indulged in certain Islamic practices and way of life. The Syariah Court also found Dahlia's claim that she had practised Hinduism during the period she lived with her mother until the age of 17, unproven (see paras 155–157).

[Bahasa Malaysia summary

Responden ('Dahlia') dilahirkan oleh bapa Hindu dan ibu Cina-Buddha yang berkahwin secara sah yang berpisah pada 1991 ketika Dahlia berumur kurang dari lima tahun. Semasa perpisahan tersebut, Dahlia tinggal bersama ibunya. Pada 17 Mei 1991, ibu Dahlia membawa Dahlia bersama apabila beliau pergi ke Jabatan Agama Islam Selangor ('JAIS') untuk memeluk agama Islam. Selepas penukaran agama, ibu Dahlia, selepas bercerai dengan suaminya, berkahwin dengan seorang lelaki Melayu dan selepas itu Dahlia tinggal bersama ibu dan bapa tirinya sehingga beliau berumur 17 tahun apabila beliau meninggalkan rumah untuk melanjutkan pelajaran. JAIS mengeluarkan kad penukaran agama kepada Dahlia dan ibunya yang menyatakan bahawa mereka telah memeluk agama Islam pada 17 Mei 1991. Bapa Dahlia tidak memberikan persetujuan penukaran agama Dahlia. Pada 2013, ketika berusia 27 tahun, Dahlia memfailkan saman di Mahkamah Tinggi Syariah Kuala Lumpur untuk satu deklarasi bahawa beliau 'tidak lagi beragama Islam' walaupun dalam pliding dan hujahnya di hadapan mahkamah beliau menegaskan bahawa beliau tidak pernah menganuti akidah Islam sejak awal lagi dan 'pengislamannya' semasa kecil adalah tidak sah. Mahkamah Tinggi Syariah memutuskan Dahlia masih beragama Islam dan menolak saman tersebut. Mahkamah Rayuan Syariah mengekalkan keputusan tersebut. Dahlia kemudian memfailkan saman pemula ('SP') di hadapan Mahkamah Tinggi Sivil terhadap Majlis Agama Islam Selangor (MAIS) dan Kerajaan Negeri Selangor untuk satu deklarasi bahawa beliau bukan 'seorang yang menganut agama Islam'. Responden dalam SP berhujah bahawa Mahkamah Tinggi tidak mempunyai bidang kuasa untuk menentukan perkara tersebut kerana Mahkamah Syariah telah pun memutuskan bahawa Dahlia adalah seorang Islam, sekali gus menjadikan persoalan status agamanya res judicata dan tidak terbuka untuk dibicarakan semula. Mereka juga berhujah bahawa oleh kerana Dahlia gagal mendapatkan relif di hadapan Mahkamah Syariah, ia adalah satu pemikiran semula di pihaknya untuk memfailkan SP bagi satu deklarasi bahawa beliau bukan seorang Islam untuk membawa kesnya dalam bidang kuasa Mahkamah Tinggi Sivil. Dalam *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181 ('Rosliza'), Mahkamah Persekutuan memutuskan bahawa hanya Mahkamah Syariah mempunyai bidang kuasa untuk menentukan permohonan bagi deklarasi bahawa seseorang itu bukan lagi seorang Islam, iaitu, kes murtad atau penolakan, tetapi jika ia adalah untuk satu deklarasi bahawa seseorang itu bukan, atau tidak pernah, seorang Muslim (iaitu, kes *ab initio*), maka hak untuk menentukan persoalan tersebut adalah

milik mahkamah sivil. Hakim Mahkamah Tinggi memutuskan bahawa kes Dahlia adalah *ab initio* dan oleh itu beliau mempunyai bidang kuasa untuk mendengar SP dan memberikan deklarasi yang dimohon Dahlia. Hakim memutuskan bahawa: (a) Dahlia telah membuktikan penegasannya dalam SP bahawa beliau tidak pernah menganut agama Islam; (b) *Rosliza* secara berkesan membatalkan keputusan Mahkamah Syariah kerana Mahkamah Syariah tidak mempunyai bidang kuasa untuk menentukan penegasan Dahlia bahawa beliau tidak menganut agama Islam *ab initio*; (c) seterusnya, keputusan Mahkamah Syariah bukanlah res judicata berkenaan dengan status agama Dahlia mahupun melucutkan locus standi untuk mendapatkan remedi daripada Mahkamah Tinggi Sivil; (d) pengakuan Dahlia yang mungkin dibuat dalam prosiding Mahkamah Syariah bahawa beliau telah mematuhi amalan Islam tertentu semasa membesar dengan ibunya yang memeluk Islam dan bapa tiri Melayunya hanyalah 'pengalaman dan pendedahan kepada agama Islam' dan tidak boleh disamakan dengan Dahlia yang 'mengamalkan dan menganuti' agama Islam; (e) Pengislaman Dahlia ketika beliau baru berusia empat tahun lima bulan adalah tidak sah kerana melanggar s 147 Enakmen Pentadbiran Agama Islam 1952 ('Enakmen 1952') yang merupakan undang-undang yang berkuat kuasa ketika itu; (f) juga s 70 mahupun s 74(3) Enakmen Pentadbiran Perundangan Islam 1989 ('Enakmen 1989') boleh digunakan untuk menegaskan bahawa Dahlia adalah seorang Muslim kerana Enakmen 1989 hanya berkuatkuasa pada 1 September 1991, selepas tarikh Dahlia bertukar agama; and (g) Dahlia tidak boleh dipersalahkan kerana memohon relif di Mahkamah Syariah terlebih dahulu kerana undang-undang pada masa tersebut mengenai bidang kuasa antara Mahkamah Syariah dan Sivil tidak jelas dan hanya dijelaskan oleh keputusan Mahkamah Persekutuan dalam *Rosliza*. Rayuan semasa adalah terhadap keputusan Mahkamah Tinggi.

Diputuskan, secara majoriti, membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

(1) **(oleh Ravinthran HMT, menentang)** SP dan afidavit yang difailkan untuk menyokongnya tidak menunjukkan sebarang unsur murtad atau penolakan agama Islam oleh Dahlia. Mengenai fakta kes yang tidak dipertikaikan, Mahkamah Tinggi dengan betul mengambil alih bidang kuasa untuk mempertimbangkan perkara tersebut berdasarkan merit sama ada untuk memberikan relif deklarasi berkenaan dengan status agamanya (lihat perenggan 26).

(2) **(oleh Ravinthran HMT, menentang)** Memandangkan Mahkamah Tinggi mendapati bahawa Dahlia bukan seorang yang menganut agama Islam dan bahawa penukaran agamanya adalah menyalahi undang-undang, perkara utama SP secara jelas jatuh dalam bidang kuasa Mahkamah Tinggi Sivil kerana ia adalah kes *ab initio*. Ia berikutan bahawa keputusan Mahkamah Syariah tidak mengikat Dahlia. Tidak ada persetujuan mahupun estoppel mahupun penepian tidak boleh

memberikan bidang kuasa kepada mahkamah yang tidak mempunyai bidang kuasa dan dengan itu doktrin res judicata tidak terpakai untuk sebarang keputusan yang dibuat oleh mahkamah tersebut (lihat perenggan 43). A

(3) **(oleh Ravinthran HMT, menentang)** Hakikat bahawa Dahlia telah memohon relif daripada Mahkamah Syariah terlebih dahulu tidak *ipso facto* melucutkan bidang kuasa mahkamah sivil atau melucutkan locus standi Dahlia untuk memfailkan SP. Mahkamah Tinggi mendapati Dahlia memohon relif daripada Mahkamah Syariah 'atas keperluan'. Ini kerana sebelum keputusan Mahkamah Persekutuan dalam *Rosliza*, undang-undang adalah tidak jelas mengenai persempadanan bidang kuasa antara kes murtad dan kes di mana pemohon menegaskan bahawa beliau tidak pernah beragama Islam. Dalam pelbagai kes sebelum *Rosliza*, mahkamah tidak membuat sebarang perbezaan antara kes murtad dan kes di mana ia telah diplidkan sama ada penukaran agama tersebut menyalahi undang-undang atau bahawa pemohon tidak pernah seorang Muslim *ab initio*. Mahkamah Sivil enggan mengadili atas dasar bahawa perkara tersebut adalah dalam bidang kuasa Mahkamah Syariah tanpa meneliti perkara perkara tersebut. Oleh itu, memandangkan sikap kehakiman yang sedia ada dan kesusahan yang dihadapi Dahlia, tidak mengapa bagi Dahlia, kerana kekurangan sebarang jalan perundangan, mendekati Mahkamah Syariah terlebih dahulu (lihat perenggan 41–43). B C D E

(4) **(oleh Ravinthran HMT, menentang)** Memandangkan pelanggaran jelas s 147 Enakmen 1952, penukaran agama Dahlia yang dikatakan pada 17 Mei 1991 adalah tidak sah. Perayu-perayu tidak pernah menyentuh perkara tentang pelanggaran s 147. Oleh itu, keputusan hakim Mahkamah Tinggi mengenai perkara ini tidak boleh dipersalahkan. Tidak ada juga merit kepada hujah perayu bahawa menurut s 74(3) Enakmen 1989, kad penukaran agama yang dikeluarkan kepada Dahlia adalah bukti muktamad bahawa beliau seorang Islam. Secara logiknya, itu tidak boleh berlaku jika penukaran tersebut sendiri secara terang-terangan menyalahi undang-undang pada tarikh ia dilakukan kerana pelanggaran undang-undang semasa, iaitu, s 147 Enakmen 1952 (lihat perenggan 29–32). F G H

(5) **(oleh Ravinthran HMT, menentang)** Fakta bahawa bapa Dhalia tidak bersetuju dengan penukaran agamanya adalah satu lagi sebab ketidaksahihannya. Mahkamah Persekutuan dalam *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 memutuskan bahawa persetujuan kedua ibu bapa diperlukan di bawah perkara 12(4) Perlembagaan Persekutuan. Tiada apa-apa pun dalam Enakmen 1952 membenarkan penukaran agama kanak-kanak pada masa material tanpa persetujuan ibu bapa yang tidak menukar agama. Di samping itu, k 4(1) Kaedah Pentadbiran I

Perundangan Islam (Pemelukan Agama Islam Orang Belum Dewasa) 1991, yang dibuat menurut Enakmen 1989, memerlukan kebenaran bertulis bapa kanak-kanak tersebut untuk penukaran agama (lihat perenggan 35).

(6) **(oleh Ravinthran HMT, menentang)** Hakim Mahkamah Tinggi menerima keterangan afidavit Dahlia dan ibunya. Keterangan ibu tidak disangkal oleh sesiapa dan keterangannya merupakan keterangan terbaik berhubung hal-hal yang berkaitan dengan didikan Dahlia dari umur lima tahun sehingga beliau meninggalkan rumah keluarga untuk melanjutkan pelajaran pada usia 17 tahun. Oleh kerana hakim Mahkamah Tinggi telah memberikan pertimbangan teliti keterangan afidavit yang tidak disangkal oleh Dahlia dan ibunya, dapatan fakta oleh hakim Mahkamah Tinggi tidak mewajarkan campur tangan rayuan (lihat perenggan 36–37).

(7) **(oleh Ravinthran HMT, menentang)** Baik di Mahkamah Syariah mahupun dalam prosiding SP, Dahlia tidak pernah berputus asa daripada pertikaian asasnya bahawa beliau bukan seorang yang menganut agama Islam. Pengakuan yang dibuatnya di Mahkamah Syariah bahawa semasa beliau tinggal bersama ibu dan bapa tirinya beliau mengikuti beberapa amalan Islam seperti solat, puasa dan menghadiri upacara keagamaan, yang berkaitan dengan kejadian zaman kanak-kanak yang dilalui dengan bapa tiri Islam dan ibu mualaf seperti dapatan oleh hakim Mahkamah Tinggi. Ia berikutan Dahlia didedahkan dengan amalan Islam pada usia awal. Bagaimanapun, penceritaannya tentang pendedahan agama Islam pada zaman kanak-kanaknya tidak dapat mengurangkan keterangan afidavit pertama ibunya yang mengatakan bahawa Dahlia tidak mengamalkan agama Islam dan dibenarkan meneruskan kepercayaan asalnya (lihat perenggan 38–39).

(8) **(oleh Mohd Nazlan HMR, majoriti)** SP yang difailkan oleh Dahlia untuk satu deklarasi bahawa beliau bukan seorang Muslim adalah perkara yang termasuk dalam Syariah, dan bukan bidang kuasa sivil. Mengenai matriks fakta kes, Dahlia tidak membuktikan berdasarkan imbangan kebarangkalian bahawa kesnya adalah kes di mana beliau tidak pernah menganut agama Islam. Oleh itu, ini bukanlah kes *ab initio*, sebaliknya ia sepatutnya dianggap sebagai 'bukan lagi seorang Muslim' atau kes penolakan, oleh itu termasuk dalam bidang kuasa Syariah (lihat perenggan 164–165).

(9) **(oleh Mohd Nazlan HMR, majoriti)** Memandangkan Mahkamah Syariah telah pun memutuskan bahawa Dahlia masih beragama Islam, SP semestinya perlu ditafsirkan sebagai kes penolakan yang sepatutnya berada di bawah bidang kuasa Syariah dalam konteks perbezaan yang dirumuskan dalam *Rosliza*. Ia adalah tidak relevan sama ada permohonan yang difailkan di Mahkamah Syariah dinyatakan sebagai tidak pernah

beragama Islam atau tidak lagi beragama Islam dengan tepat kerana dapatan kehakiman telah dibuat oleh Mahkamah Syariah bahawa seseorang itu 'adalah Muslim atau masih Muslim'. Dapatan kehakiman oleh Mahkamah Syariah bahawa seseorang itu masih beragama Islam, seperti sekarang ini, semestinya bermakna beliau seorang Islam, dan bukannya seorang yang tidak pernah beragama Islam. Oleh itu, ini telah menjawab persoalan mengenai perbezaan yang dikemukakan dalam *Rosliza* (lihat perenggan 88 & 92).

(10) **(oleh Mohd Nazlan HMR, majoriti)** Dapatan oleh Mahkamah Syariah terhadap status agama Dahlia bermakna SP adalah res judicata dan berpotensi menyalahgunakan proses mahkamah dan bahawa Dahlia tidak mempunyai locus standi untuk membicarakan semula permohonan serupa di hadapan Mahkamah Tinggi Sivil melalui SP (lihat perenggan 163).

(11) **(oleh Mohd Nazlan HMR, majoriti)** Mahkamah sivil tidak mempunyai kuasa bidang kuasa untuk merayu, menyemak atau mengenepikan dan melangkaui keputusan Mahkamah Syariah. Ini termasuk membicarakan semula isu-isu mahkamah sivil yang telah ditentukan di Mahkamah Syariah dan menolak daripada dapatan awal Mahkamah Syariah. Sebarang pembukaan semula di mahkamah sivil keputusan yang dibuat oleh Mahkamah Syariah mengenai status agama seseorang secara tegas tidak dibenarkan oleh perkara 121(1A) Perlembagaan Persekutuan. Oleh itu, keputusan Mahkamah Tinggi bahawa keputusan Mahkamah Tinggi Syariah dan Mahkamah Rayuan Syariah telah terbatal oleh otoriti *Rosliza* kerana Mahkamah Syariah tidak mempunyai bidang kuasa untuk menentukan persoalan penegasan Dahlia bahawa beliau tidak pernah menganut agama Islam adalah khilaf dan tidak dapat dipertahankan (lihat perenggan 89 & 166).

(12) **(oleh Mohd Nazlan HMR, majoriti)** Pada 28 Ogos 1993, pada masa Enakmen 1989 mula berkuat kuasa, JAIS telah mengeluarkan kad penukaran agama kepada Dahlia selepas pendaftaran penukaran agamanya. Ini menarik pemakaian s 74(3) Enakmen 1989 yang memperuntukkan bahawa sijil pemelukan Islam hendaklah menjadi bukti muktamad fakta yang dinyatakan di dalamnya. Dalam erti kata lain, penukaran agaman adalah sah. Tetapi walaupun penukaran agama itu tidak sah, ianya tidak bermakna Dahlia tidak pernah menganut agama Islam. *Rosliza* menetapkan bahawa seorang Muslim melalui pengenalan akan dikenal pasti secara sah sebagai 'orang yang menganut agama Islam' sama ada beliau menganut agama atau tidak beriman (lihat perenggan 106, 119–120 & 157).

(13) **(oleh Mohd Nazlan HMR, majoriti)** Pliding Dahlia di Mahkamah Syariah, di mana beliau tidak pernah mencabar kesahihan penukaran agamanya tetapi memohon deklarasi bahawa beliau 'tidak lagi seorang

Muslim', adalah satu bentuk pengakuan kehakiman yang berfungsi untuk menghalang atau estop beliau daripada menerima pakai pendirian berbeza dalam SP di mana kesnya menjadi satu yang beliau 'tidak pernah seorang Muslim' pada mulanya (lihat perenggan 137–143).

(14) **(oleh Mohd Nazlan HMR, majoriti)** Dalam alasan penghakimannya, Mahkamah Tinggi Syariah dan Mahkamah Rayuan Syariah mendapati bahawa Dahlia adalah seorang Muslim berasaskan, antara lain, pada definisi luas siapa seorang Muslim dalam s 2 Akta Pentadbiran Undang-undang Islam (Wilayah-Wilayah Persekutuan) 1993. Mahkamah Syariah tidak mendapati keterangan bahawa bapa Dahlia telah mencabar penukaran agamanya dan sepanjang 23 tahun sebelum permohonannya kepada Mahkamah Tinggi Syariah untuk meninggalkan Islam, Dahlia telah mengenal pasti dirinya sebagai seorang Islam dalam pelbagai cara dan telah terlibat dalam amalan dan cara hidup Islam tertentu. Mahkamah Syariah juga mendapati dakwaan Dahlia bahawa beliau telah mengamalkan agama Hindu sepanjang tempoh dia tinggal bersama ibunya sehingga umur 17 tahun, tidak dibuktikan (lihat perenggan 155–157).]

Cases referred to

Abdillah bin Labo Khan v PP [2002] 3 MLJ 298, CA (refd)

Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors [2017] 9 MLJ 541; [2016] 6 CLJ 562, HC (refd)

Chee Pok Choy & Ors v Scotch Leasing Sdn Bhd [2001] 4 MLJ 346, CA (refd)

Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor [1992] 1 MLJ 1, SC (refd)

Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal [2014] 3 MLJ 757, FC (refd)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145, FC (distd)

Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors [2012] 3 MLJ 694; [2011] 2 CLJ 165, CA (folld)

Kerajaan Malaysia & Ors v Tay Chai Huat [2012] 3 MLJ 149; [2012] 3 CLJ 577, FC (refd)

Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101, FC (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585; [2007] 3 CLJ 557, FC (refd)

Majlis Agama Islam Pulau Pinang lwn Siti Fatimah Tan Abdullah [2009] 1 CLJ (Sya) 162 (refd)

Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 3 CLJ 301, FC (distd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489, FC (refd)

Spectrum Plus Ltd, Re; National Westminster Bank plc v Spectrum Plus Ltd and others [2005] 4 All ER 209; [2005] UKHL 41, HL (refd)
Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors [2018] 2 MLJ 354; [2018] 3 CLJ 620, CA (refd)
Sykt Rodziah (sued as a firm) v Malayan Banking Bhd [2021] 5 MLJ 688; [2021] 5 CLJ 170, CA (refd)
Wan Johairiza bin Wan Ab Rahman v Mahkamah Rayuan Syariah Selangor & Ors [2021] MLJU 2586; [2021] 1 LNS 2151, HC (refd)
Zulpadli bin Mohammad & Ors v Bank Pertanian Malaysia Bhd [2013] 2 MLJ 915, CA (refd)

Legislation referred to

Administration of Islamic Law (Conversion of Minors) Rules 1991 r 4(1)
Administration of Islamic Law (Federal Territories) Act 1993 ss 2, 2(c), 46(2)(b)(x)
Administration of Islamic Law Enactment 1989 ss 70, 74(3)
Administration of Muslim Law Enactment 1952 ss 146, 147
Administration of the Religion of Islam (State of Selangor) Enactment 2003 ss 2, 2(1)(b) , 123
Courts of Judicature Act 1964 s 25(2), Schedule, item 11
Federal Constitution arts 12(4), 11, 11(1), 121(1), 121(1A), Ninth Schedule, List II, item 1
Islamic Family Law (State of Selangor) Enactment 2003 s 111
Law Reform (Marriage and Divorce) Act 1976
Syariah Court Evidence (Federal Territories) Act 1997 s 86(5)

Appeal from: *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor & Anor* [2022] 9 MLJ 372 (High Court, Shah Alam)

Majdah Muda (with Haniff Khatri) (Muda) in Civil Appeal No B-01(NCVC)(A)-40–01 of 2022 for the appellant.
Salim bin Soib (with Husna bt Abdul Halim) (Pejabat Penasihat Undang-Undang Negeri Selangor) in Civil Appeal No B-01(NCVC)(A)-57–01 of 2022 for the appellant.
Malik Imtiaz Sarwar (with Surendra Ananth) (Surendra Ananth) in Civil Appeal Nos B-01(NCVC)(A)-40–01 of 2022 and B-01(NCVC)(A)-57–01 of 2022 for the respondent.

Ravinthran JCA (delivering dissenting judgment of the court):

INTRODUCTION

[1] The two appeals before this court are against the decision of the High Court that granted a declaration that the respondent is not 'a person professing the religion of Islam'. The respondent case was that she was never a Muslim.

The appellant in Civil Appeal No B-01(NCVC)(A)-40–01 of 2022 is the Majlis Agama Islam Selangor whereas the appellant in Civil Appeal No B-01(NCVC)(A)-57–01 of 2022 is the State Government of Selangor. The appellants were the first and second defendants in the High Court. For the sake of convenience, I shall refer to them as the first and second appellants respectively.

[2] The first appellant had counterclaimed that the respondent is a vexatious litigant. The counterclaim was dismissed by the High Court but there is no appeal against this part of the decision. Thus, I shall not address the issues that are relevant to the counterclaim.

BACKGROUND FACTS

[3] I shall first refer to the background facts deposed in the affidavits which were summarized by the learned High Court judge.

[4] The respondent was born on 17 November 1986 to non-Muslim parents. Her given name at birth was Dahlia Dhaima. Her late father was a Hindu of Indian descent whereas her mother was a Buddhist of Chinese descent. The marriage was registered under the Law Reform (Marriage and Divorce) Act 1976. The couple separated in 1991. The respondent's mother took the respondent who was then under the age of five to live with her in Selayang Baru, Selangor. The marriage was dissolved on 18 December 1992 when decree absolute was granted by the High Court. But before the dissolution of the marriage, the respondent's mother converted to the Islamic faith on 17 May 1991. She took the name of Farah Hor bt Abdullah. The respondent who was only four years and five months old was also purportedly converted to the Islamic faith and given the name of Dahlia Dhaima bt Abdullah. There is no dispute that her father did not give consent to her conversion. He passed away on 22 March 1996. The respondent's mother was issued a conversion card by the Jabatan Agama Islam Negeri Selangor (JAIS) on the same day whereas the respondent was issued the conversion card only two years later when she turned seven. But the conversion card of the respondent stated that she was converted on 17 May 1991.

[5] The respondent's mother subsequently married a Muslim, namely one Zafri bin Manap on 10 April 1993. Thereafter, the respondent lived with her mother and stepfather until she moved out at the age of 17 to commence her tertiary education at Kolej Tunku Abdul Rahman. Upon completion of her studies in 2010, she moved in with her aunt in Bangsar, Kuala Lumpur. In 2015, she decided to live by herself. The above facts are not in dispute.

[6] I shall now turn to the essential facts that underpin the originating

summons of the respondent. The respondent's mother filed an affidavit to support the originating summons. She said that when the respondent was purportedly converted to Islam, she did not inform the respondent's father or obtain his consent. She also said that the five-year-old respondent did not utter the affirmation of faith during the conversion and did not know what was happening. During the time the respondent lived with her until present time, the respondent did not practise the Islamic faith but instead practised Hinduism.

[7] The respondent in her affidavit said as follows. She has been practising Hinduism since she was young. She frequented Hindu temples with her paternal relatives. Her mother and stepfather permitted her to practise her chosen faith which is Hinduism. She never practised the Islamic faith or celebrated any of its festivals or prayed as a Muslim.

[8] The respondent first filed a summons for a declaration that she was no longer a Muslim at the Kuala Lumpur Syariah High Court. But her case in the statement of claim before the Syariah High Court was that she never professed the Islamic faith from the outset. The respondent was the Majlis Agama Islam Wilayah Persekutuan (MAIWP). The summons against MAIWP was dismissed on 20 July 2017. The appeal by the respondent was dismissed on 12 January 2021. It was only after the termination of the Syariah Court proceedings that the respondent commenced the instant originating summons in the High Court.

DECISION OF THE HIGH COURT

[9] The High Court considered two crucial issues raised by the appellants. The first issue was whether the civil court possessed jurisdiction to declare that the respondent is not a person professing the religion of Islam. The second issue was whether the appellant had locus standi to file the instant originating summons given that she had filed a summons in the Syariah High Court earlier.

[10] The learned High Court judge considered the argument of the appellants that the respondent's case in the true sense is that she is no longer a Muslim. It is not her case that she was never a Muslim. In other words it is an apostasy or renunciation case. Therefore, according to counsel for the first appellant, the issue at hand is a matter of faith. It follows that only the Syariah Court is seized with jurisdiction to determine the issue. Counsel for the respondent argued otherwise. He argued that as the respondent was *ab initio* a non-Muslim, the Syariah Court had no jurisdiction in the matter. The learned High Court judge had regard to the recent Federal Court case of *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301. In that seminal case, the Federal Court in discussing the jurisdiction of the

civil court and the Syariah Court drew a distinction between apostasy cases where one claims to have left the religion of Islam and cases when one says that he or she was never a Muslim in the first place. The Federal Court held that in apostasy or renunciation cases, the Syariah Court has jurisdiction whereas in cases where it is claimed that one was never a Muslim *ab initio*, the civil court would have the right to adjudicate the matter. However, the Federal Court cautioned that 'whether it is an *ab initio* case or a renunciation case will require careful examination of the factual matrix of the case'.

[11] The learned High Court judge noted that in the instant originating summons, the respondent asserted that she was never a Muslim because she did not profess the religion and that her conversion was not valid. In respect of the admissions made in the Syariah Court by the respondent that she followed some of the practices of the Islamic religion when growing up, the learned High Court judge said that only amounted to exposure to the religion of her mother and stepfather. His Lordship considered the fact that throughout the Syariah Court proceedings, the respondent did not admit to professing the religion of Islam. In the premises, he held that the admission of facts in the Syariah Court cannot stop her from exercising her constitutional right in the civil court.

[12] The appellants raised the issues of locus standi and res judicata as the respondent had approached the Syariah Court for a declaration that she was 'no longer a Muslim'. Only after her application before the Syariah Court failed, did she file the instant originating summons for a declaration that 'she is not a person professing the religion of Islam'. The learned High Court judge reasoned as follows in respect of the locus standi and res judicata issues. At the time the respondent filed her summons in the Syariah High Court in 2013, the law was 'opaque' as to the demarcation of jurisdiction between the Syariah Courts and the civil courts in respect of apostasy cases and cases where an applicant claims that he or she was never a Muslim *ab initio*. The law became clearer after the decision of the Federal Court in the *Rosliza bt Ibrahim* case. Therefore, the avenue to approach the civil court was not available before the *Rosliza bt Ibrahim* case. In this context, His Lordship noted that in the Syariah Court, the respondent stated that she did not choose to practise the religion of Islam at the time of her conversion and did not practise it subsequently either. Therefore, the learned High Court judge ruled she ought not be prevented from having her right in respect of her religious status determined in the civil court. For this reason also, the learned High Court judge ruled that the respondent is not a vexatious litigant.

[13] In respect of the respondent's conversion on 17 May 1991, the learned High Court judge held that it was invalid as she was only four years and five months old at that time. His Lordship came to this conclusion after considering the prevailing law at the time, ie s 147 of the Administration of

Muslim Law Enactment 1952 which read as follows:

> No person who has not attained the age of puberty shall be converted to the Muslim religion.

[14] His Lordship rejected the appellants' argument that under s 70 of the Administration of Islamic Law Enactment 1989, the respondent was automatically converted to Islam with her mother because the said law came into force on a later date, ie on 1 September 1991. For the same reason, His Lordship rejected the argument that the conversion card that was issued two years later was 'conclusive proof of the facts stated therein'. The conclusivity clause found in s 74(3) of the latter 1989 Enactment had not come into force on the date of conversion.

[15] In respect of the issue canvassed by counsel for the respondent based on the Federal Court case of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145 that the respondent was converted unilaterally by her mother without the consent of her father, the learned High Court judge declined to consider it because His Lordship had found that the conversion in the instant case was unlawful from the outset.

[16] For the above reasons, the learned High Court judge granted the declaration that the respondent 'is not a person professing the religion of Islam'. At the same time, His Lordship dismissed the first appellant's counterclaim that she was a vexatious litigant. His Lordship did not make any order in respect of costs.

ISSUES IN THE APPEAL

[17] In the originating summons, the respondent prayed for a declaration that she is not Muslim. It was her case in the affidavits that her conversion was invalid and that she was not a person professing the religion of Islam from the outset. Her counsel contended that this is not a case where a person who had converted to Islam is seeking a declaration that he or she is not a Muslim due to renunciation of faith. In other words, this is not an apostasy case or to borrow the expression from the judgment in *Rosliza bt Ibrahim* case, an 'exit case' but rather an '*ab initio* case'. Therefore, the civil court has jurisdiction to hear her application, especially as it relates to a fundamental liberty, ie freedom of religion.

[18] On the other hand, both counsel for the first appellant and second appellant are on common ground that the respondent's originating summons was in the 'true sense' a renunciation case and therefore only the Syariah Court has jurisdiction in respect of the relief sought. In respect of the validity of the

A conversion, counsel for the first appellant argued that it was valid whereas counsel for the second appellant did not address the issue. However, counsel for the second appellant relied on the Syariah Court's decision that found that the respondent is a Muslim. Counsel for the first appellant also raised the argument that the matter is res judicata and that the respondent has no locus standi to B approach the civil court after having failed in the Syariah Court. He described the instant originating summons as an 'afterthought' by the respondent.

[19] Thus, the main issues that fall for determination in this appeal are the same issues canvassed in the High Court, ie jurisdiction, the religious status of C the respondent, the validity of conversion, locus standi and res judicata.

JURISDICTION

[20] Both counsel for the first and second appellants argued that the High D Court has no jurisdiction to grant relief to the respondent by virtue of art 121(1A) of the Federal Constitution. Article 121(1A) reads as follows:

> (1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

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[21] The courts referred to cl (1) are the two civil High Courts, namely the High Court of Malaya and the High Court of Sabah and Sarawak. Counsel for the first appellant argued that although the relief sought is a declaration that the respondent 'is not a person professing the religion of Islam', it is actually a case F where the respondent wanted to renounce the religion and therefore it is a matter of faith and not a matter of constitutional right as to her religious status.

[22] Both counsel for the appellants cited a plethora of authorities that held that apostasy is a matter within the exclusive jurisdiction of the Syariah Court. G I find it unnecessary to discuss the said cases as counsel for the respondent has not quarrelled with that proposition. This point was also made in the *Rosliza bt Ibrahim* case. But counsel for the first appellant and counsel for the second appellant also cited many authorities to support the proposition that in any matter that is related to religious status, the civil courts should decline H jurisdiction because of art 121(1A). Counsel for the respondent disagreed with this argument. I am of the respectful view that these cases should be read in the light of the later Federal Court judgments in the *Rosliza bt Ibrahim* case and in the *Indira Gandhi* case. For this reason as well, I shall not refer to the previous cases that run counter to the decision in the *Rosliza bt Ibrahim* case.

I

[23] In the *Rosliza bt Ibrahim* case, the Federal Court drew a distinction between apostasy or renunciation cases and cases where an applicant seeks relief in the civil court on the basis that he or she was never a Muslim in the first place. In ruling that the civil court has jurisdiction in the latter type of cases but not

the former, Tengku Maimun CJ said as follows:

> [99] Reverting to the question: do the civil courts possess jurisdiction to determine the status of persons who claim to 'never have been Muslim' as opposed to 'no longer being a Muslim'? The answer to the question must naturally be in the affirmative as otherwise there would be no legal recourse for persons of the *ab initio* category. When it concerns a renunciation case, the civil courts have consistently held that it was within the jurisdiction of the Syariah Courts conferred under art 121(1A) of the FC. For the record, learned senior federal counsel appearing for the attorney general as amicus curiae, agreed that it is the civil courts that have jurisdiction over persons of the '*ab initio* category'.
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> [100] The distinction between *ab initio* and renunciation cases and how the civil courts have always respected the Syariah Courts' jurisdiction in renunciation cases was most recently addressed by the Court of Appeal in *Maqsood*. Dr Badariah Sahamid JCA pertinently observed as follows:
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> > [101] In this respect the civil courts appear to make a distinction between conversions out of Islam by those who were Muslims by original faith and those who were non-Muslims by original faith. In the former, premised on their original faith, they were subject to the jurisdiction of the Syariah Courts and require a renunciation in the Syariah Court to confirm their non-Muslim status. As for the latter, it is on the premise that they were non-Muslims to begin with and therefore not subject to the jurisdiction of the Syariah Courts, that no such renunciation of Islam was required for any supposed renunciation of their Islamic 'faith'.

[24] Thus, art 121(1A) of the Federal Constitution that was cited by both counsel for the appellants can oust the jurisdiction of the civil court only if it is clearly established that the subject matter in question falls within the exclusive jurisdiction of the Syariah Court. Tengku Maimun CJ further said as follows on this point:

> [103] All judicial power vests solely in the civil superior courts as per the basic structure of our FC ingrained in art 121. However, art 121(1A) dispossess the civil courts of jurisdiction *ratione materiae* once it is established that the subject-matter of the suit is one which falls within the jurisdiction of the Syariah Courts. Having said that, in *ab initio* cases, the issue before the court is not one of faith. It is a question of one's identity under the FC. In contrast, renunciation cases concern persons who despite being Muslims, no longer have faith or believe in the religion.

[25] It is also instructive to read the following passages from the judgment of the *Indira Gandhi* case in which Zainun Ali FCJ exhorted civil courts not to lightly decline jurisdiction under art 121(1A) without scrutinising the nature of the matter before it. I reproduce the relevant passages below:

> [103] Premised on the above authorities, the Federal Court in *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757 reaffirmed that 'it is settled law that the question of whether a person is a

Muslim or not is a matter falling under the exclusive jurisdiction of the Syariah Court'.

[104] *In essence, the position taken in Siti Hasnah is that since matters of conversion involves Islamic law and practice, which are areas within the Syariah Court's expertise, it must follow that the Syariah Courts must have jurisdiction over such matters to the exclusion of civil courts. With respect, this approach is unduly simplistic.* It ignores the broader constitutional context in which art 121(1A) is framed. It is worth reiterating that the effect of art 121(1A) is not to oust the jurisdiction of the civil courts as soon as a subject matter relates to the Islamic religion. The powers of judicial review and of constitutional or statutory interpretation are pivotal constituents of the civil courts' judicial power under art 121(1). Such power is fundamentally inherent in their constitutional role as the bulwark against unlawful legislation and executive action. As part of the basic structure of the constitution, it cannot be abrogated from the civil courts or conferred upon the Syariah Courts, whether by constitutional amendment, Act of Parliament or state legislation.

[105] We take a firm stand on this — in that before a civil court declines jurisdiction premised on the strength of art 121(1A), it should first examine or scrutinise the nature of the matter before it. If it involves constitutional issues, it should not decline to hear merely on the basis of no jurisdiction. (Emphasis added.)

[26] Thus, the critical and determinative question in respect of jurisdiction is whether the instant case is an apostasy or renunciation case in the first place. On the face of the originating summons and the affidavits filed in support of it, there is no element of apostasy or renunciation. The respondent did not apply in the originating summons to renounce the religion of Islam. It is undisputed that the respondent is not a Muslim by original faith as she is the issue of a non-Muslim marriage contracted under the Law Reform (Marriage and Divorce) Act 1976. It is also undisputed that she was under five years old at the time of her purported conversion and that the consent of her non-Muslim father was not obtained. The High Court had therefore correctly assumed jurisdiction to consider the matter on the merits whether to grant declaratory relief in respect of her religious status. I shall now consider issues relating to the finding of the High Court that the respondent is not a person professing the religion of Islam.

VALIDITY OF CONVERSION

[27] As I said earlier, the second appellant has taken no position on this issue. However, the first appellant maintained that the conversion of the respondent was valid.

[28] As I pointed out earlier, on the date of conversion on 17 May 1991, the respondent was only four years and five months old. The prevailing law was s 147 of the Administration of Muslim Law Enactment 1952 ('the 1952 Enactment') which enacted that no person who has not attained the age of

puberty shall be converted to the Muslim religion. Counsel for the appellants cited s 70 of the Administration of Islamic Law Enactment 1989 ('the 1989 Enactment') that replaced the 1952 Enactment. It read as follows:

> If, at the moment of conversion to Islam, a *muallaf* whether male or female, has any natural child who has not attained the age of majority according to Hukum Syara' (*baligh*), the child becomes converted to Islam at the same moment.

[29] This provision, to all intents and purposes, provides for the automatic conversion of a minor without the consent of a non-converting parent. It came into force only on 1 September 1991 which is after the date of the purported conversion. Thus, it cannot apply to the respondent's conversion. The 1989 Enactment was subsequently repealed but a similar provision was enacted in the successor law. There is no evidence that the respondent underwent any conversion ceremony on any later date or upon attaining puberty. The only purported conversion was on 17 May 1991 which clearly transgressed the written prevailing law ie s 147 of the 1952 Enactment. I note that counsel for the first appellant did not address the point about violation of s 147 and the effect of it in respect on the conversion of the respondent. In my opinion, as the prevailing law categorically stipulated that no person who has not attained the age of majority shall be converted, the decision of the learned High Court judge that the conversion was invalid cannot be faulted. Furthermore, s 146 of the said 1952 Enactment provided as follows:

> No person shall be converted to the Muslim religion otherwise than in accordance with the provisions of this enactment or any rules made thereunder.

[30] Therefore, in the light of the clear violation of s 147, the purported conversion of the respondent on 17 May 1991 was anything but lawful.

[31] Counsel for the first appellant also argued that the conversion card that was issued two years later is conclusive proof that the respondent is a Muslim. This argument is based on s 74(3) of the 1989 Enactment that read as follows.

> (3) A certificate of Conversion to Islam shall be conclusive proof of the facts stated therein.

[32] I find no merit in this argument for this reason. It may well be that on the date of issuance of the conversion card, the 1989 Enactment had come into force. Therefore the fact of conversion that is stated in the conversion card may constitute proof that the respondent underwent a formal conversion two years earlier. However, it cannot logically be conclusive proof of a valid conversion if the conversion was patently unlawful in the first place on the date it was performed because of breach of the prevailing written law which is the 1952 Enactment.

[33] But before I conclude the discussion on the validity of the respondent's conversion under the 1952 Enactment, lest it be said that the civil court has no jurisdiction to interpret provisions of the said law, I shall quote below the following passage from the judgment of Zainun Ali FCJ in the *Indira Gandhi* case that said otherwise:

> [95] Clause (1A) also does not remove the jurisdiction of civil courts in the interpretation of legislation. *This is the case even in relation to legislation enacted for the administration of Muslim law*, as was held in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1:
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> > The new cl (1A) of Art 121 of the Constitution effective from 10 June 1988 has taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah Courts. But that clause does not take away the jurisdiction of the civil court to interpret any written laws of the states enacted for the administration of muslim law ... *If there are clear provisions in the State Enactment the task of the civil court is made easier when it is asked to make a declaration relating to the status of a person whether such person is or is not a Muslim under the Enactment*. (Emphasis added.)

CONSENT OF THE FATHER

[34] In the light of the *Indira Gandhi* case, the adjudication of the validity of conversion of religion without the consent of the non-converting parent, is not a matter of faith or apostasy but a matter of interpretation of a constitutional provision. Therefore, the civil court is clearly seized with jurisdiction to adjudicate the matter.

[35] In the instant case, the respondent's mother's affidavit averring she did not obtain the consent of her then husband was not disputed. As I said earlier, this point was not deliberated upon by the learned High Court judge as His Lordship found that the conversion was unlawful from the outset. I shall consider this issue as counsel for the parties raised it in this appeal. In the *Indira Gandhi* case, notwithstanding the provision in the Administration of the Religion of Islam (Perak) Enactment 2004 for the conversion of underage children unilaterally by one parent, the Federal Court held that the consent of both parents is required under art 12(4) of the Federal Constitution. In the instant case, there is no provision in the 1952 Enactment that authorises the conversion of a minor at the material time without the consent of the non-converting parent. It is interesting to note that r 4(1) of the Administration of Islamic Law (Conversion of Minors) Rules 1991 which was made under the successor law, ie the 1989 Enactment, required the written consent of the father of the minor for the conversion. Thus, even if the 1989 Enactment which came into force later is applicable, the conversion would be invalid as it is undisputed that the consent of the father was never obtained. Anyway, it is axiomatic that even if there was a provision in the state law that

allowed for unilateral or automatic conversion of minors, it cannot override the supreme law of the land which is the Federal Constitution which requires the consent of both parents before a minor can be converted. Therefore, on this ground as well, the respondent's conversion on 17 May 1991 is invalid. I have also considered the argument that unlike in the *Indira Gandhi* case, in the instant case, the respondent's father did not challenge the conversion by way of judicial review before he passed away. Notwithstanding that fact, as it is undisputed that the consent of the father was not obtained, as a matter of law, the conversion cannot be lawful as it breached a provision of the Federal Constitution. Moreover, the point was taken up by the respondent in this originating summons. Therefore, the distinction made about the absence of challenge to the conversion when the respondent was still a child is of no consequence.

WHETHER RESPONDENT IS A PERSON PROFESSING THE RELIGION OF THE ISLAM?

[36] It is trite law that an appellate court will be slow in interfering with the findings of fact of the court of first instance without good reason. In the instant case, the learned High Court judge gave careful consideration to the unrebutted affidavit evidence of the respondent and her mother. I shall repeat below the salient evidence that led the learned High Court judge to conclude that the respondent is not a person professing the religion of Islam.

[37] As I said earlier, the finding of the learned High Court judge that the conversion of the five-year old minor was unlawful cannot be faulted.

Therefore, the respondent was not a person professing the religion of Islam from the outset as found by the learned High Court judge. The respondent's mother deposed in her affidavit that the respondent continued to practise Hinduism while she lived with her and her Muslim husband. She did not profess the religion of Islam. The respondent's mother said that she agreed for her daughter to be converted for a reason. After she separated from her Hindu husband, she decided to convert to Islam as she wanted to marry a Muslim. An officer from the Jabatan Agama Islam Negeri Selangor (JAIS) advised her that the respondent should also be converted to Islam to buttress her custody application in the pending divorce proceedings. The respondent in her affidavit said that she had been frequenting Hindu temples and celebrating Hindu festivals with her paternal relatives since young. She also averred that both her mother and her Muslim stepfather permitted her to profess and practice her chosen faith. There is no affidavit from her stepfather to contradict her averment. The learned High Court judge accepted the affidavit evidence of both the respondent and her mother. In my view, this finding of fact by the learned High Court judge does not warrant appellate interference. The

respondent's mother's evidence was not contradicted by anyone and her evidence would constitute the best evidence in respect of matters pertaining to the respondent's upbringing from the age of five until she left the family home to pursue tertiary evidence at the age of 17.

ADMISSIONS OF FACT IN THE SYARIAH COURT

[38] The learned High Court judge also gave due consideration to the submission of counsel for the first appellant that some admissions were made by the respondent during the Syariah Court proceedings. She admitted that during the time she lived with her mother and stepfather, she did follow some Islamic practices such as praying, fasting and attending religious ceremonies. She is also able to utter the Affirmation of Faith. She was required to attend eight sessions of Syariah counselling at the Jabatan Agama Islam Wilayah Perseketuan during the Syariah Court proceedings. However, the learned High Court judge dismissed the contention of the counsel for the first appellant that the said admissions meant that the respondent is person professing the religion of Islam in the following passage of his judgment:

> [33] On the present facts, the plaintiff merely narrated her experiences, associations and exposures to the religion of Islam when she was young. She was being truthful during the Syariah proceedings. However, throughout the Syariah proceedings, she did not admit she professed the religion of Islam. The plaintiff did not retract her statements or admissions in the Syariah proceedings in this is originating summons. What the plaintiff was saying in this originating summons was that she did not profess the Islam religion *ab initio*. Therefore, those admission of facts in the Syariah Court proceedings could not stop her from exercising her constitutional right in the civil court.

[39] I am wholly in agreement with the reasoning of the learned High Court judge. It is crucial to note that the respondent never resiled from her basic contention in the Syariah Court proceedings or in the originating summons that she was not a person professing the religion of Islam. The admissions of fact in the Syariah Court proceedings relate to incidents of a childhood spent with a Muslim stepfather and Muslim convert mother as found by the learned High Court judge. It follows that she was exposed to Islamic practices at an early age. However, her narration of her childhood exposure to the religion of Islam cannot detract from the first hand affidavit evidence of her mother who said that the respondent did not practise the religion of Islam and was permitted to continue in her original faith.

LOCUS STANDI AND RES JUDICATA

[40] Counsel for the first appellant argued in the High Court that the respondent lacked locus standi to seek relief through the instant originating summons because she had earlier filed a summons in the Syariah High Court in

Kuala Lumpur for a declaration that she was no longer a Muslim (Syariah Case No 043). It was argued that the originating summons was an afterthought and that the respondent was bound by the decisions of the Syariah High Court and Syariah Court of Appeal that dismissed her summons. For this reason, the matter is res judicata and the respondent was estopped from relitigating the matter in the civil court.

[41] I see no merit in the above argument for the following reasons. I am in agreement with the decision of the learned High Court judge who ruled that the respondent did not lack locus standi and that the doctrine of res judicata does not apply. The learned High Court judge noted that prior to the decision of the Federal Court in the *Rosliza bt Ibrahim* case, the law was not clear in respect of the demarcation of jurisdiction between apostasy cases and cases where the applicant asserts that he or she was never a Muslim to start with. I find this observation of the learned High Court judge to be entirely correct. In a host of cases (some of which were cited by counsel for the first respondent) that preceded the *Rosliza bt Ibrahim* case, the courts did not make any distinction between apostasy cases and cases where it is pleaded that either the conversion was unlawful or that the applicant was never a Muslim *ab initio*. The civil courts declined to adjudicate on the basis that the matters were within the jurisdiction of the Syariah Court without scrutinizing the subject matter. Therefore, given the existing judicial attitude at that time and the predicament that the respondent was in, the learned High Court judge described her action in seeking relief from the Syariah Court as something done 'out of necessity'. That is why she sought a declaration in the Syariah Court that she is a person who 'is no longer a Muslim'. But, as I pointed out earlier and as noted by High Court, the respondent consistently maintained her narrative that she never practised the religion of Islam. Thus, I would agree with the learned High Court judge that in view of the *Rosliza bt Ibrahim* case which has opened a new judicial pathway for applicants in the same situation as the respondent, she should not now be prevented from pursuing her right to determine her religious status in the civil court which is a matter of constitutional and legal identity. In the premises, with respect, I find it difficult to agree with learned counsel for the first appellant's characterisation of the originating summons as a mere 'afterthought' by the respondent.

[42] I would also agree that the fact that the respondent sought relief from the Syariah Court does not *ipso facto* deprive the civil court of jurisdiction. It is trite law that jurisdiction cannot be conferred by consent or agreement if there was no jurisdiction in the first place. Zainun Ali FCJ in the *Indira Gandhi* case said as follows:

> [74] It is not open for the Syariah Courts to enlarge their own jurisdiction by agreements: 'it is a fundamental principle that no consent or acquiescence can confer on a court or tribunal with limited statutory jurisdiction any power to act

beyond that jurisdiction' (*Federal Hotel Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers* [1983] 1 MLJ 175).

[43] Therefore, it should not matter that the respondent, for lack any legal avenue, approached the Syariah Court first. Jurisdiction cannot be vested in the Syariah Court if the court has no jurisdiction in the subject matter to start with, especially in a matter that involves a fundamental liberty under the Federal Constitution. The learned High Court judge found that the respondent was not a person professing the religion of Islam and that her conversion was unlawful. Therefore, the subject matter plainly falls within the jurisdiction of the civil court as it is an *ab initio* case. It follows that the decision of the Syariah Court is not binding on her. To reiterate, it is trite law that neither consent nor estoppel nor waiver can confer jurisdiction upon a court that lacks jurisdiction and thus the doctrine of res judicata cannot apply to any decision made by such a court (see *Chee Pok Choy & Ors v Scotch Leasing Sdn Bhd* [2001] 4 MLJ 346).

DOCTRINE OF PROSPECTIVE RULING

[44] In respect of the change in the law brought about by the *Rosliza bt Ibrahim* case, counsel for the first respondent argued that the doctrine of prospective ruling should apply. Therefore, the avenue that was opened by the *Rosliza bt Ibrahim* case cannot be availed by the respondent who had failed in her attempt to obtain relief in the Syariah Court earlier. The said doctrine limits the general principle of retroactivity that applies to a court ruling. The purpose of the doctrine is to mitigate the potential harshness that may arise from a change in the law following a ground breaking decision of an apex court. This American judicial doctrine was discussed at length for the first time in the House of Lords in *Re Spectrum Plus Ltd; National Westminster Bank plc v Spectrum Plus Ltd and others* [2005] 4 All ER 209; [2005] UKHL 41 which was cited by counsel for the first appellant. The doctrine is now part of the corpus of our law following its adoption in local cases. However, I fail to see its application here. Counsel for the respondent correctly pointed out that whilst Zainun Ali FCJ pronounced in the *Indira Ghandi* case that the doctrine will apply to that case, the Federal Court in the *Rosliza bt Ibrahim* case did not make any similar pronouncement. In the premises, the principles of law in respect of the jurisdiction of the court in cases such this that was enunciated in the *Rosliza bt Ibrahim* case must be taken as declaratory of the law without being unduly constricted by the doctrine of prospective ruling.

CONCLUSION

[45] For the foregoing reasons, I am of the view that the learned High Court judge had correctly granted the relief sought in the originating summons. I shall therefore affirm the decision of the High Court and dismiss the appeals. No order as to costs.

Mohd Nazlan JCA (delivering majority judgment of the court):

INTRODUCTION

[46] These are appeals against the decision of the High Court which allowed the respondent's application for a declaration that she is not a person who professes the religion of Islam. After having heard the appeals which was conducted by way of a remote communication technology via *Zoom*, we, by a majority, decided to allow the appeals for the reasons contained in these grounds of judgment.

KEY BACKGROUND FACTS

[47] These two appeals, which were heard together before us originated from an originating summons ('OS') instituted by the respondent at the High Court in Shah Alam, against Majlis Agama Islam Selangor (MAIS) and the Selangor State Government. The principal relief sought by the respondent in the OS was for a declaration that she is not a person professing the religion of Islam.

[48] The respondent was born on 17 November 1986 to non-Muslim parents whose marriage was registered under the Law Reform (Marriage and Divorce) Act 1976. Her father professed the Hindu religion and her mother was originally a Buddhist.

[49] Sometime in 1991, following the separation of her parents, and this was when the respondent was about five years old, the respondent followed and lived with her mother in Selayang Baru. On 17 May 1991, the respondent's mother visited Jabatan Agama Islam Selangor (JAIS)/PERKIM to convert to the religion of Islam. It was not a secret that the reason for the conversion was that she wished to marry a Muslim person after the conclusion of her divorce.

[50] The respondent was also brought to JAIS/PERKIM by her mother who claimed that an officer informed her that the respondent had to be converted into Islam as well in order to ensure she would get custody over the respondent. The respondent's mother further asserted that the officer had also informed her that once the respondent attained the age of 18, she would be able to choose her own religion.

[51] As was integral to the conversion process, the respondent's mother uttered the requisite affirmation of faith — 'Kalimah Syahadah', and did it twice. The respondent, then barely five, unsurprisingly did not, but both mother and daughter were issued conversion cards by JAIS. And it bears emphasis that based on the card issued on 28 August 1993 to the respondent,

she had been converted on 17 May 1991. Her mother took the name Farah Hor bt Abdullah, and for the respondent, Dahlia Dhaima bt Abdullah.

[52] Separately on 7 August 1992, the Kuala Lumpur High Court granted a decree nisi in relation to her parents' divorce proceedings, where care, control and custody of the respondent was granted to her mother. The decree absolute was granted on 18 December 1992.

[53] Although the respondent's father passed away on 22 March 1996, her mother had affirmed an affidavit to aver that the respondent's father's consent had never been obtained for the conversion of the respondent.

[54] The respondent's quest for declaratory relief on her religious status started on 12 December 2013, when the respondent, by then aged 27, filed a summons against the Majlis Agama Islam Wilayah Persekutuan ('MAIWP') at the Kuala Lumpur Syariah High Court (No 14100–043–0968 of 2013) ('MAIWP Summons') primarily for a declaration that she was no longer a Muslim, even though as learned counsel for the respondent was firm in highlighting that in her statement of claim for the MAIWP Summons, the respondent maintained that she had never professed Islam and the purported conversion occurred only because of her mother's conversion.

[55] The respondent maintained that she never professed the religion of Islam at any point in time but instead continued to profess the Hindu religion, frequently visited her father's family and went to Hindu temples with them. Her mother and stepfather too allowed her to practise and profess the Hindu religion.

[56] The Kuala Lumpur Syariah High Court dismissed the MAIWP Summons on 20 July 2017. And her appeal was subsequently dismissed by the Syariah Court of Appeal on 12 January 2021.

[57] Of crucial importance, which will be made manifest later in this judgment, is the contention of the respondent that her case is that she has never professed the religion of Islam.

[58] The respondent then turned to the civil court. It is reasonable to state that this course of action was not unexpected in light of the recent landmark decision of the Federal Court in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301, in respect of which much of the case of the respondent relied on.

[59] Central to that important decision, and relevant to the instant case, is the firm distinction drawn by the Federal Court between 'one who no longer professes the religion of Islam' and 'one who never professes the religion of Islam'. The former refers to apostasy or renunciation cases which fall within the jurisdiction of the Syariah Courts, whilst the latter, described as *ab initio* cases, fall within the jurisdiction of the civil courts.

[60] In support of her OS, the respondent argued that her conversion was invalid and a nullity because it violated s 147 of the Administration of Muslim Law Enactment 1952, then in force at the material time.

[61] That provision reads as follows:

> No person who has not attained the age of puberty shall be converted to the Muslim religion.

[62] In their opposition to the OS, both appellants made the key argument that the High Court did not have jurisdiction to hear the OS as the bone of contention on the respondent's religious status fell within the jurisdiction of the Syariah Courts.

ESSENCE OF HIGH COURT DECISION

[63] The High Court agreed with the respondent, allowed the OS and granted the declaration sought by the respondent. The learned High Court judge as such determined that this was a case where the respondent was never a Muslim to begin with, such that following *Rosliza*, the court had the jurisdiction to hear her application.

[64] The High Court also ruled that the conversion of the respondent when she was a minor contravened s 147 of the Administration of Muslim Law Enactment 1952 ('the 1952 Enactment').

[65] It was also held that the earlier proceedings in the Syariah Court had been nullified by the apex court decision in *Rosliza* because the Syariah Court had in the first place no jurisdiction to determine the question of the respondent's assertion that she did not profess the religion of Islam *ab initio*. This was determined by the High Court to be a case of one never being a Muslim since the respondent never professed the religion and as the conversion was not valid.

MAIN POINTS OF ARGUMENTS AT APPEAL

[66] Before us the respondent submitted that the appeals should be dismissed as this court would be equally bound by *Rosliza* and *Indira Gandhi*

a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145, the other Federal Court decision much relied on by the respondent. The position taken by both appellants however, according to the respondent, was untenable for they clearly run counter to both these case authorities.

[67] The appellants on the other hand argued that *Rosliza* and *Indira Gandhi* are not relevant to the instant case and ought to be distinguished because of a number of reasons. First, whilst *Rosliza* and the instant case concerned applicants seeking declarations by way of originating summons that they were not persons professing the religion of Islam, the subject matter in the application in *Indira Gandhi* was not concerned with the status of her children as Muslims converts but rather with questions of the legality the administrative action taken by the Registrar of Muallaf in the exercise of his statutory powers. The instant case also does not involve arguments on the right to profess and practise the religion of one's choice under art 11 of the Federal Constitution. This is because in the OS the respondent's case was essentially that she was not attempting to convert out of the religion since she was never a Muslim to start with.

[68] Secondly, in *Indira Gandhi* the applicant sought to invalidate the conversion of their daughters by their father without the consent of the applicant mother. In the instant case there is no evidence that the respondent's late father had in his lifetime (before his passing in 1996) ever challenged her conversion which happened in 1991.

[69] Thirdly, and this is crucial, unlike in both *Rosliza* and *Indira Gandhi*, in the instant case, the Syariah High Court and the Syariah Court of Appeal had already made a determination that the respondent is a person who professes the religion of Islam.

ANALYSIS AND FINDINGS OF THIS COURT

[70] The arguments of the appellants are not unattractive or without merit. After all, *Rosliza* is not a case of conversion unlike presently and *Indira Gandhi* too, not like the present, concerns a challenge of administrative decision in the issuance of the certificate of conversion.

[71] But we acknowledge these two decisions of the apex court establish important principles that are especially relevant to the issues for determination in the instant case — whether the case is about one seeking a declaration she is a Muslim or that she is no longer a Muslim which determines the court having the jurisdiction on the matter, and perhaps less so, whether both parents had given consent to the conversion to make it constitutionally valid.

[72] There is in our view absolutely no doubt that by the doctrine of *stare decisis* or judicial precedent, this court must follow the binding precedent created by these decisions of the Federal Court. The facts of *Rosliza* and *Indira Gandhi* are of sufficient similarity to those in the instant case to readily trigger the application of the doctrine of *stare decisis* (see the Federal Court decision in *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149; [2012] 3 CLJ 577).

The important matter of jurisdiction

[73] As a pivotal matter of jurisdiction, in all such cases like the present, the critical question to be determined is whether the application is an *ab initio* or a renunciation case. We would think that the ruling in *Rosliza* by the Federal Court does not only apply prospectively, in light of the rule that if the verdict on fresh interpretation of the law did not come with any declaration as to whether the ruling should apply prospectively, then the general rule that all judgments of the courts apply retrospectively, takes effect (see the decision of this court in *Abdillah bin Labo Khan v Public Prosecutor* [2002] 3 MLJ 298).

[74] However it must be appreciated that in this instant case, like probably many other cases, the religious status of the respondent has in fact been determined by the Syariah High Court, in this case that of the Federal Territory of Kuala Lumpur. It has even been affirmed by the Syariah Court of Appeal of the Federal Territory of Kuala Lumpur. The law, as enshrined in the Federal Constitution no less, does not, we emphasise, countenance any review or appeal, let alone re-litigation or unravelling by the civil court of a decision which is within the exclusive jurisdiction of the Syariah Court.

[75] It is manifest that the critical context here is the duality of the legal system in the country's constitutional construct as so firmly and immutably enshrined in the Federal Constitution, specifically in art 121(1A) which reads thus:

> The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

[76] Reference in cl (1) is to the civil court — all such superior and subordinate courts throughout Malaysia.

[77] The Syariah Courts in the States are in a different hierarchy of court system which is parallel to the civil court system. Article 121(1A) must additionally be construed in light of item 1 of the State List. Under item 1 of List II — State List, the Syariah Courts have jurisdiction over persons professing the religion of Islam in respect of any matters stipulated therein, and

include Islamic law and personal and family law of persons professing the religion of Islam.

[78] And further art 74(2), read together with item 1 of List II — State List to the Ninth Schedule confer on the States the power to establish Syariah Courts as the judicial institution with the jurisdiction on all matters administered under Syariah laws. This clearly provides that all matters on Islamic affairs are under the jurisdiction of the States.

[79] It is true, as clarified in *Indira Gandhi* that art 121(1A) does not constitute a blanket exclusion of the jurisdiction of Civil Courts whenever a matter relating to Islamic law arises. Article 121(1A) does not oust the jurisdiction of the civil courts as soon as a subject matter relates to the Islamic religion. The inherent judicial power of Civil Courts in relation to judicial review and questions of constitutional or statutory interpretation is not and cannot be removed by this article.

[80] It must also be recognised that in this context, leading cases such as the Federal Court decision in *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 held that Syariah Courts are similar to the Sessions and Magistrate courts in the sense that their powers are confined to item 1 in List II — State List of the Ninth Schedule to the Federal Constitution and in particular, only over persons professing the religion of Islam. And that fundamentally the civil superior courts are directly established by the Constitution itself, whereas the Syariah Courts in a State was established only upon the Legislature of the State enacting to establish it under the powers given to it by the said item 1 of the State List.

[81] Nonetheless, the appellants are clearly not wrong in submitting that art 121(1A) vests the exclusive jurisdiction of Syariah laws in that Syariah Courts are the competent authority in respect of the administration of Islamic laws. Reference may also be usefully made to a number of decisions of high authority in respect of art 121(1A) on the status of decisions of the Syariah Courts on the issues concerning religious status, including conversions out of the religion of Islam, as well as divorce matters.

[82] Thus in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 the Federal Court stated that the jurisdiction of the Syariah Court to deal with conversion out of Islam, though not expressly mentioned in the relevant State Enactment, could be read into the same by necessary implication as derived from the provisions therein on conversion into Islam.

[83] In *Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan*

(JAWI) & Ors [2012] 3 MLJ 694; [2011] 2 CLJ 165 the Court of Appeal held that determination of the question as to whether a person is a Muslim or otherwise is, under art 121(1A), the sole jurisdiction of the Syariah Court. Earlier, to similar effect, the Supreme Court in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1 ruled that the question of whether a person was a Muslim or had renounced the religion before his death was to be properly determined in the forum of the Syariah Court.

[84] In *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757 the Federal Court observed that it would be highly inappropriate for the civil courts to adjudicate on the validity of conversion of any person into Islam since this was construed as a religious issue which pursuant to art 121(1A) means the civil courts have no jurisdiction as it would be a matter strictly within the exclusive jurisdiction of the Syariah Court. And in *Lina Joy* the Federal Court established that apostasy out of Islam is concerned with Islamic law which fell within the jurisdiction of Syariah Courts, thus to the exclusion of the civil courts under art 121(1A).

[85] We should highlight that more directly to the point of the jurisdictional authority of the civil court vis a vis the Syariah Court, reference may also be usefully made to the decision of the Court of Appeal in *Kaliammal a/p Sinnasamy v Majlis Agama Islam Wilayah Persekutuan (JAWI) & Ors* [2012] 3 MLJ 694; [2011] 2 CLJ 165 where an application for a declaration that a deceased was a Hindu at the time of his death was refused in light of the order of the Syariah High Court stating that the deceased was a Muslim. The following passages are especially instructive:

> [12] Reverting to the issue at hand, a Syariah High Court has the power to hear and decide to make a declaration as to the status of a person as a Muslim. It is the court of competent jurisdiction for that purpose. This is established in *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor* [1992] 1 MLJ 1; [1991] 1 CLJ Rep 77; [1991] 3 CLJ 2768 (SC); *Soon Singh Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 2 CLJ 5 (FC); *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 4 MLJ 585; [2007] 3 CLJ 557 (FC). In the light of these cases, *Ng Wan Chan* is no longer authority.
>
> [13] As held in *Nor Kursiah Baharuddin v Shahril Lamin & Anor* [1991] 3 MLJ 174; [1997] 1 CLJ Supp 599 HC and approved in *Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi dan Rayuan Yang Lain* [2002] 3 MLJ 657; [2002] 3 CLJ 766 CA, *it is not for the civil court to go behind that order of the court of competent jurisdiction to question the merits of the matter decided upon by that court. It is therefore not for the civil court to look behind the order and say whether the Syariah High Court acted correctly or not and to interfere with its decision*. (Emphasis added.)

[86] Even more clearly, another decision of the Court of Appeal in *Syarifah*

Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors [2018] 2 MLJ 354; [2018] 3 CLJ 620, a clear cut renunciation case, ruled to similar effect. Mohd Zawawi Salleh JCA (as he then was) delivering the judgment of the court stated the following:

> [25] We are of the view that Syariah Courts and civil courts form two separate legal system. We agree with the view expressed by Salbiah Ahmed in her article entitled: 'Islam in Malaysia: Constitutional and Human Rights Perspectives ', Muslim World Journal of Human Rights 2, No 1 (2005), when she asserts that:
>
> > *State Syariah Courts are not Courts inferior to the Federal Courts as the term 'inferior court' is understood in terms of appeal and judicial review by superior courts over inferior courts. The State Syariah Courts are in a separate hierarchy to that of the federal civil courts. There is no right of appeal from the State Syariah Courts to the federal civil courts. There is no power of judicial review by the federal high court over the State Syariah Courts*.
>
> (See also Hassan Saeed, '*Freedom Religion, Apostasy and Islam* ' (2004) 149 at 150).
>
> [26] In the same vein, in *Kamariah Ali lwn Kerajaan Negeri Kelantan, Malaysia Dan Satu Lagi Dan Rayuan Yang Lain* [2002] 3 MLJ 657; [2002] 3 CLJ 766, Abdul Hamid Mohamed JCA (as he then was) said:
>
> > *... bukanlah dalam bidang kuasa Mahkamah ini untuk mengkaji semula keputusan-keputusan mahkamah syariah yang terletak dalam sistem berlainan itu. Mahkamah ini mesti menerima Mahkamah Tinggi Syariah itu telahpun membuat keputusan fakta itu, mengikut hukum syarak dan mahkamah ini tidak berkuasa campur tangan dalam keputusan itu dan menggubahnya, membatalkannya, mengisytiharkan ia tidak sah* atau tidak menghiraukan dan membebaskan perayu-perayu ...
>
> (See also *Nor Kursiah Baharuddin v Shahril Lamin & Anor* [1997] 1 MLJ 537; [1997] 1 CLJ Supp 599).
>
> [27] In *Subashini Rajasingam v Saravanan Thangathoray* [2007] 7 CLJ 584, a case concerning the custody of children when one parent had converted to Islam, the demarcation between the civil and Syariah Courts was interpreted to mean that Syariah Courts 'are not lower in status than civil courts ... they are of equal standing under the (Federal Constitution) (at [23]). (Emphasis added.)

[87] More recently is a decision of the High Court in *Wan Johairiza bin Wan Ab Rahman v Mahkamah Rayuan Syariah Selangor & Ors* [2021] MLJU 2586; [2021] 1 LNS 2151 where an applicant sought leave for judicial review to challenge the decision in respect of a divorce proceedings by the Selangor Syariah Court of Appeal which had dismissed the application for revision filed by the applicant. The High Court held that the application for judicial review must fail for lack of jurisdiction. In its judgment which has since been affirmed by the Court of Appeal, the High Court held as follows:

[24] It is my view that based on art 121(1A) of the FC, the decisions made by the Syariah Courts cannot be reviewed by the civil High Courts. The insertion of art 121(1A) of the FC is to stop the practice of aggrieved parties coming to the civil High Courts to review the decisions made by the Syariah Courts. This is recognized by the Federal Court in the case of *Sukma Darmawan Sasmitaat Madja*.

...

[31] in *Indira Gandhi*, the subject matter of judicial review is the issuance of certificates of conversions by the Registrar of Muallafs under the Administration of the Religion of Islam (Perak) Enactment 2004). *Indira Gandhi* does not involve any decision made by the Syariah Courts.

[32] Whereas in *Rosliza*, there is no judicial review filed and the matter was commenced by way of originating summons seeking declarations, among others, that the plaintiff is not a person professing the religion of Islam. The case of *Rosliza* too does not involve any decision made by the Syariah Courts.

[33] In the present case, I find that the subject matter of review is the decision by the Syariah Appeal Court which is made within its jurisdiction and therefore, it is not amenable to judicial review by virtue of art 121(1A) of the FC.

[34] Therefore, premised on the above, the applicant's reliance on *Indira Gandhi* and *Rosliza* is misplaced and devoid of merit.

[35] The applicant contended that the applicant can file a judicial review against the Syariah Court as they are akin to inferior tribunal. The applicant again refers to the Federal Court's decision in *Indira Gandhi*.

[36] However, I find that the said decision is not an authority to support the applicant's contention that judicial review can be filed against the Syariah Court. In fact, *Indira Gandhi* is not a case where a judicial review application is filed against the Syariah Court.

[37] The nub of the Federal Court's decision in *Indira Gandhi* in relation to the status of the Syariah Court is that the power of judicial review lies with the civil court and the Syariah Court is inferior only in the sense that the Syariah Court has no power of judicial review.

[88] As such, in light of these authorities, in our view this must mean that in cases where the Syariah Court has already made the determination that an applicant is a Muslim, like in the instant case, the distinction drawn in *Rosliza* must necessarily be construed and answered as a renunciation case. It is irrelevant whether the application filed at the Syariah Court is stated as one never was a Muslim or one no longer is a Muslim precisely because the judicial determination has already been made by the Syariah Court, in that one is a Muslim or is still a Muslim. A judicial determination by the Syariah Court that a person is *still* a Muslim, like presently, must necessarily mean he *is* a Muslim, and not one who was never a Muslim. This therefore already answers the question on the distinction posed in *Rosliza*.

[89] These authorities on art 121(1A) have established that the civil court clearly has no power of judicial review over the Syariah Court let alone reversing or departing from or in any manner re-litigating or unravelling or going behind the decisions of the Syariah Court as this in our view would tantamount to an infringement of art 121(1A) of the Federal Constitution. Accordingly, in our view, on this issue of jurisdiction alone, the decision of the High Court in the instant case which held that the decisions of the Kuala Lumpur Syariah High Court and the Syariah Court of Appeal have been nullified by the authority of *Rosliza* because the Syariah Court had no jurisdiction to determine the question of the respondent's assertion that she never professed the religion of Islam, is erroneous and cannot be sustained.

[90] We further observe that there was not even any prayer in the OS which sought to set aside the decisions of the Syariah High Court and the Syariah Court of Appeal, which would have been otiose anyways, for lack of jurisdiction given the centrality of art 121(1A) to the country's dual system constitutional construct, as discussed earlier.

[91] The respondent too did not refer this court to even one decision of the civil court which sanctions the making of any judgment by the civil court which for all intents and purposes represents a re-litigation of a decision arrived at by the Syariah Court.

[92] And because determination had already previously been pronounced by the Syariah Courts in this case that the respondent is still a Muslim, this is therefore necessarily a renunciation case which should rightly fall under Syariah jurisdiction within the context of the distinction formulated in *Rosliza*.

[93] On this ground of absence of jurisdiction alone, the two appeals must be allowed.

Whether this is an ab initio or renunciation case

[94] For completeness, notwithstanding the jurisdictional point which has completely answered the respondent's case (that this is a renunciation case given the prior determination that she is still a Muslim made by the Syariah High Court, affirmed by the Syariah Court of Appeal), we wish to also examine the merits of the application by the respondent, again, by applying *Rosliza*. The High Court arrived at the decision that this was an *ab initio* case, following *Rosliza* largely on account of the respondent's own averment that she was never a Muslim and that she did not show she had affirmatively professed the religion of Islam since her conversion.

[95] The important point to note too here is the obvious one that mere

assertion that an application is an *ab initio* case does not automatically oust the jurisdiction of the Syariah Court. Just because an application is made to the Civil High Court and drafted in terms of an *ab initio* case, it cannot mean that the civil court is immediately seised of jurisdiction to consider the declaration sought for. What the civil court must do in such situation is to determine whether the case is one of *ab initio* or renunciation in nature.

[96] This was made clear by the Federal Court in *Rosliza*, where it was held thus:

> [108] ... Whether it is an *ab initio* case or a renunciation case will require a careful examination of the factual matrix of the case.

[97] This is what we shall do next. It will be readily seen that there are a number of issues in the background or factual matrix of the instant case that do not assist the respondent in establishing that there was no affirmative profession of the religion of Islam or that this was an *ab initio* case.

The conversion

[98] A principal question to be considered is the status of the conversion of the respondent on that 17 May 1991. The appellants' position on this was that the prevailing law for conversion to Islam at that material time was the Administration of Islamic Law Enactment 1989 ('the 1989 Enactment'), specifically s 70 which states as follows:

> Consequential conversion of children
>
> If, at the moment of conversion to Islam, a *muallaf* whether male or female, has any natural child who has not attained the age of majority according to Hukum Syara' (*baligh*), the child becomes converted to Islam at the same moment.

[99] Given the above, it was argued that the conversion of the respondent to Islam was valid and in accordance with the state law even though she had yet to attain the age of majority since she would have been for all intents and purposes then automatically converted to Islam at the same time as when her mother converted to Islam. In addition, s 74(3) of the 1989 Enactment provides that a certificate of conversion to Islam shall be conclusive proof of the facts stated therein.

[100] The learned High Court judge was in our view however to a certain extent correct in dismissing this submission given that the State legislative history of this law unmistakably recorded that the 1989 Enactment which concerned conversion to Islam in Part VIII only came into force on 1 September 1991 (via Sel PU 58/1991). This was plainly a date which was subsequent to the conversion date of the respondent on 17 May 1991, albeit by

not more than a mere three and a half months. This it must be emphasised was before the 1989 Enactment came into force.

[101] For completeness, on 1 September 2003, s 123 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 (via Sel PU 25/2003) came into force and repealed the 1989 Enactment.

[102] The applicable law governing conversion at the material time was in fact the 1952 Enactment, referred to earlier. Section 146 provided as follows:

> S146 Control of conversion
>
> No person shall be converted to the Muslim religion otherwise than in accordance with the provisions of this enactment or any rules made thereunder.

[103] And it is reiterated that s 147 of the 1952 Enactment 1952 reads as follows:

> S147 No conversion of children
>
> No person who has not attained the age of puberty shall be converted to the Muslim religion.

[104] Given the prohibition against conversion of a child who had yet to attain puberty, the conversion of the respondent to Islam on 17 May 1991 was held by the High Court to be an infringement of the state law of conversion in force then. As noted by the learned High Court judge, the respondent was then only four years and five months old.

[105] Accordingly, the learned High Court judge found that the respondent was not validly converted to Islam, and therefore, she could not be a person professing the religion of Islam despite being erroneously identified as a Muslim-convert for so many years.

[106] However, in our view it could on the other hand be stated that given that JAIS had subsequently on 28 August 1993, by which time the 1989 Enactment had come into force, issued a conversion card to the respondent upon the registration of her conversion, this attracted the application of s 74(3) of the 1989 Enactment which provided that a certificate of conversion to Islam shall be conclusive proof of the facts stated therein. In other words, the conversion was valid.

[107] It is useful at this juncture to refer to *Rosliza* where the Federal Court ruled that the High Court and the Court of Appeal were erroneous in their conclusions as these had been arrived at on the evidentially flawed premise that the appellant was originally a Muslim seeking to renounce her religion.

[108] Significantly, in its assessment of the issue whether the High Court has exclusive jurisdiction to hear the matter, the Federal Court formulated the question as to whether a person is or is not a Muslim rather than whether a person is no longer a Muslim.

[109] The Federal Court in *Rosliza* observed that whilst it was undisputed that the applicant's biological father is a Muslim, under s 111 of the Islamic Family Law (State of Selangor) Enactment 2003 a child born less than six months (Islamic calendar) or born to a woman not married to the man who fathered the child is illegitimate and the paternity of the child could not be established in the father. Thus, since the applicant in that case is an illegitimate child in the absence of proof of marriage of her parents at the time she was born, s 111 applied to the father to remove him of any ascription of paternity to the applicant. The putative father cannot as such, in law, be considered the child's father.

[110] The Federal Court then ruled that on a true construction of s 111 of the Islamic Family Law (State of Selangor) Enactment 2003, the word 'parents' in para (b) of the interpretation of 'Muslim' in s 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 does not include the putative father of an illegitimate child. Thus, the applicant cannot be considered a Muslim simply by virtue of the said s 2(1)(b) of the s 2 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.

[111] Relevant to this analysis is the discussion on the meaning of professing religion in the Federal Constitution and the term profess and practice in art 11(1) of the Federal Constitution which extends to how one may be identified with a religion and the level of devotion to their beliefs, while item 1 of the State List excludes the word practice. The Federal Court in *Rosliza* made this important observation:

> [82] The issue that concerns us in this dispute is whether the Syariah Court has jurisdiction *ratione personae* over the plaintiff. To understand the answer to the question, it must first be understood that the word 'Muslim' is not only a label to describe a person's personal beliefs in the religion of Islam but it is also a legal term upon which the Syariah Court's *ratione personae* jurisdiction is built.
>
> [83] Article 11(1) of the FC guarantees the right to profess and practice one's religion. The conjunction 'and' in art 11(1) suggests that it governs more than mere professing. It extends to how one identifies oneself or how one may be identified with a specific religion and the right to also determine one's own level of devotion to his or her belief. However, item 1 of the State List singularly uses the word 'professing'. Contrasting art 11(1) with item 1 of the State List, it is plain that the latter was deliberately more narrowly worded to exclude the requirement of 'practice'. Thus, so long as one is a Muslim by identification whether he practises or

not, or whether he continues to believe in the faith or not, he is no less legally identified as a 'person professing the religion of Islam'.

[84] Taken in this context, there is a notable difference between 'profess' on the one side and 'profess and practice' on the other. The former is a constitutional term and is justiciable before the civil courts. The latter phrase is a question of faith and dogma and therefore falls within the jurisdiction of the Syariah Courts by virtue of art 121(1A) of the FC.

[85] The dispute before us relates to the question of one's constitutional identity. It therefore necessitates constitutional interpretation of something which only the superior courts of this country have the right to address. It is only when one's faith is the main subject matter of the dispute does such dispute fall within the jurisdiction of the Syariah Courts. In this regard, there is a significant distinction between 'one who no longer professes the religion of Islam' on the one side, and 'one who never professes the religion of Islam', on the other. This will be further elaborated later.

[112] As such it has been made patently clear that in order to ascertain whether or not the matter falls under the purview of Syariah Court jurisdiction, both these aspects must be present, namely, jurisdiction of *ratione personae* (or by reason of the person) and of *ratione materia* (or by subject matter). And that the word 'professing' in item 1 of the State List is one concerning constitutional identity, which is to be interpreted by the civil courts whilst the phrase 'profess and practice' in art 11 relates to the question of faith which, following art 121(1A) falls within the jurisdiction of the Syariah Courts.

[113] It was importantly further emphasised in *Rosliza* that in *ab initio* cases, the issue before the court is not one of faith. It is instead concerning one's identity under the Federal Constitution. A Muslim by identification would be legally identified as a 'person professing the religion of Islam' regardless of whether he practises it or not, or whether he continues to believe in the faith or otherwise. Renunciation cases on the other hand, concern persons who despite being Muslims, no longer have faith or believe in the religion. Her Ladyship Tengku Maimun CJ further explained as follows:

[108] The case is no different here. At the risk of repetition, if a matter concerns an *ab initio* case, that is, the question whether a person is in the first place a 'person professing the religion of Islam' it necessarily concerns a question regarding one's identity under the FC which in turn necessitates constitutional interpretation. This is because the phrase 'persons professing the religion of Islam' is a constitutional term. Accordingly, the civil courts are empowered, indeed, duty-bound to adjudicate the matter. It is only in renunciation cases where one already professes or proclaims to profess the religion of Islam (irrespective of whether they actually practise the faith) with the subsequent decision to change what they profess, that the matter is removed to the jurisdiction of the Syariah Court. *The distinction drawn from the cases of Lina Joy and Azmi illustrates the difference. Whether it is an ab initio*

> *case or a renunciation case will require a careful examination of the factual matrix of the case.* (Emphasis added.)

[114] *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585; [2007] 3 CLJ 557 involved a case where a Malay Muslim woman wanted to convert to Christianity, which was a renunciation case. As was the case of *Majlis Agama Islam Pulau Pinang lwn Siti Fatimah Tan Abdullah* [2009] 1 CLJ (Sya) 162 even though the applicant was originally a non-Muslim who converted to Islam but later chose to renounce it. These cases are distinguishable from *Rosliza* on the basis that the latter is an *ab initio* case, not a renunciation case.

[115] The Federal Court in *Rosliza* contrasts *Lina Joy* with *Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors* [2017] 9 MLJ 541; [2016] 6 CLJ 562. The situation faced by the applicant in *Rosliza* is similar to that in *Azmi bin Mohamad Azam*. Thus, *Lina Joy* and *Siti Fatimah* are renunciation cases where the issue was whether one was no longer a Muslim, whilst in *Azmi bin Mohamad Azam* and *Rosliza*, the question was whether one was never a Muslim. Tengku Maimun CJ stated thus:

> *Ab initio* cases are unique and peculiar where the person claims never to have been a Muslim in the first place but for some reason or another he or she is designated as a person who 'professes the religion of Islam'. Logically, any legal presumption as to their Muslim status cannot apply because they were never identified as Muslim to begin with. Here, *Lina Joy* and like cases may be distinguished by referring to the decision of Yew Jen Kie J (as she then was) in *Azmi*.

[116] In the instant case, the respondent argued that hers is an *ab initio* case, and that she was never a Muslim. It is as such for the civil court to make a determination whether she was a Muslim in the first place. Now, it bears repetition that in order to do that, as is clear in the above passage in *Rosliza,* a careful examination of the factual matrix of the case is necessary. The Federal Court emphasised the same point earlier in the judgment as follows:

> [98] What can be distilled from *Lina Joy* and like cases on the one side, and *Azmi* and like cases on the other, is that it is a matter of proof that the person affirmatively professed the religion of Islam at the material time. Absent of such proof, the case may be classified as an *ab initio* case.

[117] A careful examination of the factual matrix of the instant case is thus essential to determine whether there is proof that the respondent in the case had affirmatively professed the religion of Islam at the material time, which is a constitutional identity issue, not one of practice or faith. In the absence of such proof, the respondent could not be identified as a Muslim, and the case would be that she was never a Muslim — an *ab initio* case.

[118] Now, it has earlier been found by the High Court that the conversion of the respondent in 1991 was legally flawed for non-compliance with the provisions of the State Enactment in force then.

[119] We have however determined to the opposite effect in that pursuant to s 74(3) of the 1989 Enactment the conversion was not invalid. But for argument sake — even assuming it was not valid, the question then arises — whether this would be a complete answer to the constitutional identity issue — that she was therefore not one who had ever professed the religion of Islam if the conversion was invalid? The High Court was of the said conclusion.

[120] The answer, in our view, is however in the negative. The reason is that as stated in *Rosliza*, the entire factual matrix of the case must be examined for proof of affirmative profession of the religion by the respondent at the material time. And it bears emphasis this does not concern one's faith but instead one's identity under the Federal Constitution. A Muslim by identification would be legally identified as a 'person professing the religion of Islam' regardless of whether he or she practises the religion or not.

[121] Three key observations about the conversion status of the respondent in the instant case are of significance.

Wide definition of 'Muslim'

[122] First and foremost, the definition of a Muslim in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 includes practical considerations and are not entirely concerned with the practice of the religion, or the extent of one's true faith.

[123] The Syariah High Court decided that the respondent is a Muslim (affirmed on appeal) by applying the interpretation of 'Muslim' in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 which defines 'Muslim' to mean:

(a) a person who professes the religion of Islam;

(b) a person either or both of whose parents were, at the time of the person's birth, Muslims;

(c) a person whose upbringing was conducted on the basis that he was a Muslim;

(d) a person who has converted to Islam in accordance with the requirements of s 85;

(e) a person who is commonly reputed to be a Muslim; or

(f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written.

[124] This is a widely drafted definition which is plainly not confined only to one professing the religion of Islam by conversion.

Validity of conversion not determinative

[125] The second observation has relevance to the case of *Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors* [2017] 9 MLJ 541; [2016] 6 CLJ 562, which, as mentioned earlier, the Federal Court in *Rosliza* categorised as an *ab initio* case (as distinct from *Lina Joy* which was a clear renunciation case).

[126] In *Azmi bin Mohamad Azam*, the applicant, although was raised in a Bidayuh Christian community, was just ten when his then Christian parents decided to convert to Islam. However, when he attained the age of majority, he chose Christianity as his religion. He has never practised the Islamic faith and had embraced Christianity. It should be added that neither was there any Syariah Court proceedings involved in *Azmi bin Mohamad Azam*.

[127] The point is he did not challenge the validity of his conversion as a minor. The High Court ruled that since the applicant had not in the first place professed his faith in Islam but his conversion followed that of his mother as he was a minor at the material time, logic dictated that he could not be considered as a person professing the religion of Islam.

[128] It was thus held in *Azmi bin Mohamad Azam* that since the applicant's conversion was not based on his professing Islam but by virtue of his mother's conversion and his mother's choice for him, now that the applicant was a major, he would be at liberty to exercise his constitutional religious right to choose his religion under art 11 of the Federal Constitution.

[129] The point of relevance here is that in *Azmi bin Mohamad Azam,* in his legal pursuit to be recognised as a Christian, he did not challenge the validity of his conversion. In other words, the High Court in that case ruled that notwithstanding the conversion into Islam, the applicant on evidence had not in the first place professed his faith in Islam.

[130] The reverse in our view must as such be no less true. Even if assuming that the process of conversion is a nullity (which we found not to be the case), it does not necessarily mean that the person is not a Muslim if evidence shows

that he in fact still professes the religion based on applicable legal interpretation despite any conversion which could turn out to be legally flawed.

[131] As such, similarly in the instant case, the conversion of the respondent when she was a minor at barely five, irrespective of whether it was valid or otherwise, should not be determinative of the question of her present religious status, without examination of the entire factual matrix of the case on proof of profession, especially when the application for declaratory relief was first filed by her in the MAIWP Summons very much later in 2013 at the age of 27.

Conversion validity never raised in the Syariah proceedings

[132] The third observation on this issue of conversion is this. Despite the contention raised at the High Court and now repeated before us disputing the validity of her conversion as a minor, it is significant to note that the respondent never mentioned in the proceedings in the Syariah Courts this specific complaint as a reason to deny her professing the Islamic faith. The respondent could have raised this at the Syariah High Court but she did not.

[133] Her pleadings in the MAIWP Summons made absolutely no mention of any challenge against the validity of her conversion vis a vis s 147 of the 1952 Enactment.

[134] Apart from her religious status having already been determined by the Syariah High Court of Federal Territory of Kuala Lumpur, the respondent did not, as mentioned, produce any proof on any challenge against the respondent's conversion to Islam during her childhood or that against the custody order granted to the respondent's mother (who later converted to Islam) by the respondent's late father. At the same time neither did the respondent's OS seek to nullify the Syariah High Court of Federal Territory of Kuala Lumpur proceeding or to challenge the authority's power in issuing the respondent's conversion card as a Muslim.

[135] This lends much credence to the appellants' contention that the respondent's complaint in the OS against the conversion is an afterthought.

The respondent's pleadings fashioned on renunciation

[136] This further fortifies the view that the respondent's grievance in the OS was about wanting to leave the religion, not that she was never a Muslim to begin with. For this, it bears emphasis that her own pleadings in the Syariah Court can be clearly read and understood to mean just that.

[137] The respondent herself pleaded in paras 7–8 of her statement of claim

in the MAIWP Summons that she embraced Islam on 17 May 1991 following her mother's conversion from Hinduism to Islam as the latter wished to marry a Muslim man who was named therein. In para 11 the respondent further stated that even though she became a Muslim, she was given the freedom by her mother to practise the Hindu religion and had often visited the family of her father who was of the Hindu faith.

[138] More, in para 14 the respondent pleaded that she never practised the Islamic faith since her conversion to Islam was merely one of form and not substance as it was done only because of her mother who had to convert to marry a Malay Muslim. In para 19.1 she clearly asked for the declaratory relief that *she was no longer a Muslim*.

[139] Thus, the respondent recognised she was a Muslim such that in her pleadings before the Syariah proceedings it was a case of wanting to be declared no longer a Muslim. But subsequently in the OS, her position changed, and her case became one who was never a Muslim to begin with.

[140] The pleadings in the MAIWP Summons are as such a form of judicial admission which thus operate to prevent or estop the respondent from adopting a different stance. In a recent decision of this court in *Sykt Rodziah (sued as a firm) v Malayan Banking Bhd* [2021] 5 MLJ 688; [2021] 5 CLJ 170 it was held that a party is estopped from taking a position different from what was pleaded in its earlier suit or changing its stance in another action. The party's admissions in pleadings in the earlier suit would amount to judicial admissions admissible against it.

[141] Related to this, in another decision of a Court of Appeal in *Zulpadli bin Mohammad & Ors v Bank Pertanian Malaysia Bhd* [2013] 2 MLJ 915 it was explained that the rationale of judicial estoppel is to prevent intentional inconsistency and to protect the court from the perversion of judicial machinery.

[142] It is true that the MAIWP Summons was pre-*Rosliza*. There was no recognisable legal distinction at that time between *ab initio* and renunciation cases. But still, even then, there was nothing preventing the respondent from asserting in the MAIWP Summons that she was never a Muslim.

[143] Regardless of the extent of clarity in the state of the law then, the respondent could have easily argued to such effect, attacked the validity of the conversion, and asked for a declaration that she was not a Muslim. Instead from the totality of her pleadings in the MAIWP Summons it was unmistakably

clear that she admitted that she converted to Islam as a child, only that she now wished not to be recognised as one since as claimed by her, she had never practised the faith.

The respondent's averments in OS contradict earlier Syariah judicial findings

[144] In her affidavit in support of the OS dated 10 May 2021 the respondent made the point that she never practised the religion of Islam. She said she was brought up as a Hindu and that continued even after conversion in 1991 when she was four. She averred that with her father and his family, she had visited and prayed at Hindu temples and celebrated Hindu festivals. The respondent stated that even after her father's demise in 1996, she continued her practice in the religion of Hinduism, often with members of her father's family.

[145] The respondent emphasised she never followed the Islamic faith. She claimed to have never prayed or attended mosques, nor celebrated any Muslim festivals. Neither did she observe the need to consume only Halal food. The respondent averred that her Muslim-convert mother and her Malay-Muslim stepfather with whom she lived in Selayang Baru (since her parents' separation) until she was about 17 allowed her to continue to profess Hinduism.

[146] Having completed her secondary school, the respondent then enrolled at Tunku Abdul Rahman College residentially, and thereafter stayed with an aunt in Bangsar from around 2010 until 2015 when she started living alone in Subang Jaya until presently. As mentioned, she initiated the MAIWP Summons in 2013, as she felt she needed to remove the mention of Islam as her religion from her identity card given her assertion that she had never professed the religion.

[147] She was first ordered by the Syariah High Court to undergo counselling with the religious department for a period of four months, twice a month. But as she maintained her stance, the matter proceeded for trial where she called two witnesses — her mother and a cousin from her father's family. As stated earlier, on 20 July 2017 the Syariah High Court dismissed the MAIWP Summons. On 12 January 2021 the Syariah Court of Appeal affirmed the decision of the Syariah High Court and dismissed her appeal.

[148] In her reply affidavit of 11 August 2021 the respondent repeated most of her averments in the supporting affidavit including making the emphasis that her conversion on 17 May 1991 was entirely not her choice but the decision of her mother to convert at the material time. The respondent also stated that although whilst at primary school she had been asked to take the subject *Pendidikan Agama Islam*, her mother never taught her about the religion let alone sent her to Islamic religious school.

[149] In addition, for the OS, the respondent also had the support of an affidavit by her mother, affirmed on 10 May 2021 which also stated that the respondent was raised as a Hindu and practised the religion. Her mother averred that the respondent did not profess or practise the religion of Islam during the time the respondent lived with her.

[150] However, in an *afidavit keterangan* filed earlier by the respondent's mother — Farah Hor bt Abdullah — for the purpose of the MAIWP Summons, which is exhibited in the respondent's affidavit in the instant OS, it is stated that even though the respondent did not practise the religion, that her mother did not teach her about Islam given her own ignorance, and that her mother did not prevent the respondent from practising any other religion, her mother did not know the religion practised by her daughter after she started staying alone from aged 17.

[151] Crucially, in her affidavit in support, the respondent not only exhibited her pleadings as filed in the MAIWP Summons, but also the grounds of judgment of the Syariah High Court of 20 July 2017 and of the Syariah Court of Appeal dated 12 January 2021. These are exhibits produced by the respondent herself. And these grounds of judgment provided a different picture of the religious status of the respondent.

[152] The respondent stated however that these decisions which rejected her application for the declaration that she was no longer a Muslim had no bearing on her OS before the High Court in Shah Alam because she was never one who professed the religion of Islam at any point in her life, that the conversion was invalid, especially in light of *Indira Gandhi* and that the matter should properly be considered in the jurisdiction of the civil courts.

[153] We reiterate that in the first place, the subject matter in dispute in *Indira Gandhi* was not the status of the appellant's children as Muslim converts or with the questions of Islamic personal law and practice. It was on the legality of the administrative action taken by the Registrar in the exercise of his statutory powers in issuing the certificate of conversion, and not in respect of the facts stated in the certificate.

[154] And in that case, since the appellant was a non-Muslim, thus absent the requisite *locus* to appear before the Syariah Court, the civil court became seised with jurisdiction to hear the matter. Further, the Federal Court applied the doctrine of prospective overruling in *Indira Gandhi*, so as not to give retrospective effect to decisions of the courts which had already taken place prior to the date of the judgment. In fact, neither did the respondent raise *Indira Gandhi* in the Syariah proceedings which in fact concluded only in 2021 with the affirmation of the decision of the Syariah High Court by the Syariah

Court of Appeal. We have also stated that despite the averment by the respondent's mother that the consent of the respondent's father was never obtained for the conversion (an argument developed in the context of the ruling against unilateral conversion in *Indira Gandhi*), there is no evidence that her late father had ever challenged the conversion. In any event, as discussed earlier, we have also found the conversion to be valid (particularly in the context of the 1952 Enactment and the 1989 Enactment), and that even if it was not, it would not in this case be determinative of the question on the respondent's religious status.

[155] Secondly, no less importantly, having stated all that, the Syariah High Court and the Syariah Court of Appeal in this case did come to the conclusion that the respondent was still a Muslim. The summary of the key findings of the Syariah High Court in the MAIWP Summons are as follows:

(a) the respondent asked for a declaration that she was no longer a Muslim and for the records of the first appellant to change the status of the respondent to be one who was a non-Muslim;

(b) despite the respondent observing the order of the Syariah High Court for her to undergo MAIWP counselling sessions (eight in total), she maintained her position to leave the religion;

(c) on the crucial issue of whether she was a Muslim, the Syariah High Court referred to s 2 of Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 which defines a Muslim in any one of the following terms:

> 'orang Islam' ertinya —
>
> (a) seseorang yang menganut agama Islam;
>
> (b) seseorang yang salah seorang atau kedua ibu bapanya, pada masa kelahiran orang itu, ialah orang Islam;
>
> (c) seseorang yang cara dia dibesarkan telah dijalankan atas asas bahawa dia orang Islam;
>
> (d) seseorang yang telah masuk Islam mengikut kehendak seksyen 85;
>
> (e) seseorang yang lazimnya dikenali sebagai orang Islam; atau
>
> (f) seseorang yang ditunjukkan telah menyatakan, dalam hal keadaan di mana dia terikat oleh undang-undang untuk menyatakan yang benar, bahawa dia adalah orang Islam, sama ada pernyataan itu secara lisan atau bertulis.

(d) quite apart from her conversion, relying particularly on sub-paras (c) and (e) above, it was held that the respondent was a Muslim;

(e) in respect of the other critical issue of whether the conduct, actions and activities of the respondent showed that she was not a Muslim, it was found by the Syariah High Court that despite the conversion being a process not understood by the respondent who was only slightly above four then, she had since been raised by her Muslim-convert mother and Muslim stepfather until she was 17. The respondent acknowledged she was a Muslim even during her primary school where in her affidavit used in the proceedings she stated that her teacher asked her to take the subject *Pendidikan Islam*. Further even though she maintained she never practised the religion, she agreed when cross-examined during trial that whilst she was living with her mother and stepfather she followed their Islamic practices and rituals such as praying, fasting, and occasionally attended religious classes, as well as programs and festivities related to the religion of Islam;

(f) despite the respondent's testimony that she never practised the teachings of the religion of Islam and instead observed Hinduism even when living with her mother until she attained 17 since her mother gave her the freedom to practise her religion of choice, the Syariah High Court found that her claim that she practised Hinduism during that period unproven. At trial, the respondent's mother gave evidence as her witness and confirmed that whilst she did not teach her daughter the religion, she had no knowledge when the respondent started to follow the Hindu religion. The respondent's one other witness, a cousin of hers also gave evidence that he did not know whether or not the respondent followed Islam when living with her mother. He only knew of the respondent not observing Islam but following Hinduism based on what had been told by the respondent to him, and when she attended prayers at the Hindu temple with him;

(g) it was determined that the respondent had the requisite basic knowledge as a Muslim. When asked, she was able to pronounce the *kalimah syahadah* and explain what it meant. Thus the reasons given by the respondent to leave the religion are irrelevant since the contention that one does not practise the religion could not determine her religious status. Not observing the requirements of the religion and even attending prayers at Hindu temples and celebrating Hindu festivals did not necessarily invalidate the *syahadah* or her religious belief especially when she herself was fully aware that she was a Muslim and identified as one from small and during her primary school days;

(h) the application to renounce Islam was made only after some 23 years after the conversion into Islam. This is also not to mention that the respondent's identity card already stated that she is a Muslim and she had been carrying this status for the past 23 years and been using her Muslim name for the past three decades. The respondent had the same

duties and responsibilities as others professing the Islamic faith. Any lack of understanding ought to be addressed by learning more about the religion instead of asking for a declaration that one is no longer a follower of the faith;

(i) the Syariah High Court concluded that her conversion was regular and valid and no defects had been shown to invalidate the same. There was similarly insufficient evidence proffered by the respondent to substantiate her claim to justify that she be declared a non-Muslim; and

(j) the respondent's application for a declaration that she was no longer a Muslim was therefore refused.

[156] In the subsequent decision by the three-member panel of the Syariah Court of Appeal of the Federal Territory of Kuala Lumpur dated 12 January 2021 as set out in its grounds of judgment, the key findings may be conveniently summarised as follows:

(a) on the issue of whether the trial judge was wrong in ruling the respondent was a Muslim, regard was properly had to the interpretation of a 'Muslim' in s 2 of the Administration of Islamic Law (Federal Territories) Act 1993 (as the Bahasa Malaysia version set out above) which includes: (i) a person who professes the religion of Islam; (ii) a person either or both of whose parents were, at the time of the person's birth, Muslims; and (iii) a person whose upbringing was conducted on the basis that she was a Muslim;

(b) it was reiterated that after the conversion in 1991, the respondent was formally registered as a Muslim when she was seven, and her identity card too signifies her religion as Islam, and her mother remained a Muslim when the respondent reached 18 years old. There is again no evidence that the respondent's father challenged the conversion of the respondent in 1991 or after she was formally registered as a Muslim subsequently in 1993;

(c) the respondent became a Muslim upon the conversion of her mother since under Syariah principles, the religion of a minor below the age of 18 would follow that of a Muslim parent. In addition, under art 12(4) of the Federal Constitution, the court could make the presumption that if the parents or lawful custodian of a minor are Muslims, the minor is also a Muslim;

(d) in respect of the second issue, as to whether the trial judge erred in not accepting the respondent's testimony that she did not profess or practise the religion of Islam, the Syariah Court of Appeal did not find any error in the conclusions reached by the trial judge;

(e) it was additionally determined that the respondent's first witness — her own mother — was not a competent witness in light of the relationship, and as for the one other witness, her male cousin, the court ruled that although his testimony could be accepted despite being a non-Muslim, the respondent had not produced sufficient number of witnesses as required under Syariah rules as stated in s 86(5) of the Syariah Court Evidence (Federal Territories) Act 1997. No other witnesses had been produced to support her claim that she did not practise the religion of Islam during the years she lived with her mother until she turned 17 as well as during the period thereafter;

(f) neither did the respondent produce clear documentary evidence to substantiate her religious practice during the period. The pictures submitted by the respondent (of performing Hindu prayers and playing with dogs) are not sufficiently cogent since they could instead be said to have been specifically produced for this case;

(g) the evidence of the respondent's lifestyle and practice which did not conform with the requirements of the religion did not necessarily result in her ceasing to be a Muslim. It had more to do instead with sins and rewards of an individual Muslim vis a vis his or her failure either to perform what is obligated or to refrain from what is prohibited. Even the commission of a major sin does not make a Muslim cease to be one in the absence of clear evidence that such infringements violate one's creed and *aqidah*; and

(h) the decision of the Syariah High Court is affirmed — the respondent has failed to prove her case to justify the granting of a declaration that the respondent was no longer a person professing the religion of Islam

[157] The Syariah High Court thus declared the respondent as a Muslim, having considered the evidence stated earlier in the context of the definition of 'orang Islam' under the said s 2 which includes '(c) seseorang yang cara dia dibesarkan telah dijalankan atas asas bahawa dia orang Islam'. As stated earlier, *Rosliza* established that a Muslim by identification would be legally identified as a 'person professing the religion of Islam' regardless of whether she practises or not, or whether she continues to believe in the faith or otherwise. Section 2(c) of the Administration of Islamic Law (Federal Territories) Act 1993 is an example which provides for an interpretation of a Muslim by identification, thus becoming a 'person professing the religion of Islam' notwithstanding it concerns less with one's religious practice and degree of faith but more on considerations on one's background and upbringing.

[158] It is as such clear that the averments of the respondent in her OS and supporting affidavits concerning her Islamic religious practice, or absence of it are diametrically opposed to the findings of the Syariah High Court and

Syariah Court of Appeal as found in the respective grounds of judgment as produced in the respondent's own affidavit. There is no suggestion however that these grounds are not genuine. Furthermore, Kuala Lumpur Syariah High Court is a court of competent jurisdiction under art 121(1A) of Federal Constitution and seised with jurisdiction to hear and determine the issue of the religious status of the respondent under s 46(2)(b)(x) of the Administration of Islamic Law (Federal Territories) Act 1993.

[159] At the risk of repetition, the respondent, as recorded in the grounds of judgment of the Syariah High Court was stated to have made admissions during proceedings, specifically — 'Plaintif mengikut amalan mereka seperti puasa, sembahyang, mengikuti kelas agama sekali sekala dan menghadiri program yang berkaitan agama serta kenduri menurut masyarakat Islam. Tambahan, Plaintif mempunyai asas pengetahuan sebagai orang Islam kerana mampu mengucap dua kalimah syahadah dan menjelaskan maksud syahadah kepada Mahkamah semasa berbuat demikian'.

[160] In light of the said admissions and the definitive findings made by the Syariah High Court as affirmed by the Syariah Court of Appeal, we are of the view that the determination by the High Court in the OS proceeding that the admissions in the earlier Syariah proceedings by the respondent that she had practised praying, fasting, attended Islamic religious classes and ceremonies whilst staying with her Muslim convert mother and Malay Muslim stepfather are 'mere experiences and exposures to the religion' that did not equate to the Islamic religious practice or the profession of the religion, is not tenable.

[161] The finding of the High Court that the respondent has never been a Muslim is therefore erroneous.

Other issues

[162] This application by the respondent to the Syariah High Court of the Federal Territory of Kuala Lumpur was made under s 46(2)(b)(x) of the Administration of Islamic Law (Federal Territories) Act 1993. The respondent had chosen to submit to the jurisdiction of the Syariah High Court of Federal Territory of Kuala Lumpur. Throughout the entire process, including at the Syariah Court of Appeal, the respondent was represented by *Syarie* counsel. About four months after the date of the Syariah Court of Appeal Order, the respondent on 10 May 2021 instituted the instant OS, this time in Shah Alam Civil High Court against the appellants. Thus, the respondent chose to commence her suit in Kuala Lumpur Syariah High Court but later initiated the OS in Shah Alam Civil High Court.

[163] In any event, the respondent's religious status having already been determined by Kuala Lumpur Syariah High Court and Syariah Court of Appeal, also means that this OS is res judicata, and potentially an abuse of court process. Since her status as a Muslim has already been judicially determined by the Syariah Courts, the respondent has no locus standi to re-litigate a similar application before the Civil High Court by way of this OS. Moreover, when there are multiplicity of proceedings in any court(s), the court is vested with power to strike out the subsequent proceeding on the plea of res judicata, as mandated under s 25(2) and item 11 of the Schedule to the Courts of Judicature Act 1964.

[164] Given all these considerations on the factual matrix of the case, we are inclined to conclude that the respondent has not on a balance of probabilities proved her case to be one where she was never a person who professed the religion of Islam. This was not therefore an *ab initio* case. Instead it ought to have been considered as a 'no longer a Muslim' or a renunciation case, falling therefore within the Syariah jurisdiction. The decision of the High Court which found to the contrary ought therefore to be set aside and the appeals be allowed.

CONCLUSION

[165] In view of all the reasons as discussed above, we reiterate that we find that the OS filed by the respondent at the High Court in Shah Alam for a declaration that she was not a Muslim to be a matter that fell within the Syariah, not civil jurisdiction.

[166] As judicial determination on the religious status of the respondent had already previously been made by the Kuala Lumpur Syariah Court and affirmed by the Kuala Lumpur Syariah Court of Appeal, the OS must be construed as a renunciation case in light of art 121(1A) of the Federal Constitution and considering that the civil courts have no jurisdictional authority to appeal, review or set aside and go behind the decisions of the Syariah Courts. These include relitigating at the civil court issues already determined in the Syariah Court and departing from the earlier findings of the Syariah Court. Any re-opening at the civil courts of decisions made by the Syariah Courts on an individual's religious status is firmly not countenanced by art 121(1A) of the Federal Constitution. We emphasise that *Rosliza* and *Indira Gandhi* do not involve any prior judicial determination by the Syariah Courts of the relevant issues, unlike in the instant case before us.

[167] In any event, for completeness, even if the jurisdictional point is disregarded, we find that the factual matrix of the case, given the several

considerations highlighted above, demonstrates that the respondent has not succeeded in establishing that she never professed the religion of Islam.

[168] The OS is also on this latter analysis a renunciation case, thus falling outside the jurisdiction of the civil courts.

[169] As such, the appeals are allowed, and the decision of the High Court is set aside. My learned brother, Yaacob bin Hj Md Sam JCA has read this judgment in draft and has agreed with it.

[170] We however make no order as to costs.

Appeals allowed and High Court's decision set aside.

Reported by Ashok Kumar